CHAPTER 7

Citizenship

MEANING AND SIGNIFICANCE

Like any other modern state, India has two kinds of people—citizens and aliens. Citizens are full members of the Indian State and owe allegiance to it. They enjoy all civil and political rights. Aliens, on the other hand, are the citizens of some other state and hence, do not enjoy all the civil and political rights. They are of two categories—friendly aliens or enemy aliens. Friendly aliens are the subjects of those countries that have cordial relations with India. Enemy aliens, on the other hand, are the subjects of that country that is at war with India. They enjoy lesser rights than the friendly aliens, e.g., they do not enjoy protection against arrest and detention (Article 22).

The Constitution confers the following rights and privileges on the citizens of India (and denies the same to aliens):

1. Right against discrimination on grounds of religion, race, caste, sex or place of birth (Article 15).
2. Right to equality of opportunity in the matter of public employment (Article 16).
3. Right to freedom of speech and expression, assembly, association, movement, residence and profession (Article 19).
4. Cultural and educational rights (Articles 29 and 30).
5. Right to vote in elections to the Lok Sabha and state legislative assembly.
6. Right to contest for the membership of the Parliament and the state legislature.
7. Eligibility to hold certain public offices, that is, President of India, Vice-President of India, judges of the Supreme Court and the high courts, Governor of states, Attorney General of India and Advocate General of states.

Along with the above rights, the citizens also owe certain duties towards the Indian State, as for example, paying taxes, respecting the national flag and national anthem, defending the country and so on.

In India, both citizens by birth as well as naturalised citizens are eligible for the office of President while in USA, only a citizen by birth and not a naturalised citizen is eligible for the office of President.

SINGLE CITIZENSHIP

Though the Indian Constitution is federal and envisages a dual polity (Centre and states), it provides for only a single citizenship, that is, the Indian citizenship. The citizens in India owe allegiance only to the Union. There is no separate state citizenship. The other federal states like USA and Australia, on the other hand, adopted the system of double citizenship.

In USA, each person is not only a citizen of USA but also of the particular state to which he/she belongs. Thus, he/she owes allegiance to both and enjoys dual sets of rights—one set conferred by the national government and another by the state government. This system creates the problem of discrimination, that is, a state may discriminate in favour of its citizens in matters like right to vote, right to hold public offices, right to practice professions and so on.

This problem is avoided in the system of single citizenship prevalent in India.

In India, all citizens irrespective of the state in which they are born or reside enjoy the same political and civil rights of citizenship all over the country and no discrimination is made between them. However, this general rule of absence of discrimination is subject to some exceptions, viz,

1. The Parliament (under Article 16) can prescribe residence within a state or union territory as a condition for certain employments or appointments in that state or union territory, or local authority or other authority within that state or union territory. Accordingly, the Parliament enacted the Public Employment (Requirement as to Residence) Act, 1957, and thereby authorised the Government of India to prescribe residential qualification only for appointment to non-Gazetted posts in Andhra Pradesh, Himachal Pradesh, Manipur and Tripura. As this Act expired in 1974, there is no such provision for any state except Andhra Pradesh[1] and Telangana[2].
2. The Constitution (under Article 15) prohibits discrimination against any citizen on grounds of religion, race, caste, sex or place of birth and not on the ground of residence. This means that the state can provide special benefits or give preference to its residents in matters that do not come within the purview of the rights given by the Constitution to the Indian citizens. For example, a state may offer concession in fees for education to its residents.
3. The freedom of movement and residence (under Article 19) is subjected to the protection of interests of any schedule tribe. In other words, the right of outsiders to enter, reside and settle in tribal areas is restricted. Of course, this is done to protect the distinctive culture, language, customs and manners of schedule tribes and to safeguard their traditional vocation and property against exploitation.
4. Till 2019, the legislature of the erstwhile state of Jammu and Kashmir was empowered to:
   - (a) define the persons who are permanent residents of the state; and
   - (b) confer any special rights and privileges on such permanent residents as respects:
     - (i) employment under the state government;
     - (ii) acquisition of immovable property in the state;
     - (iii) settlement in the state; and
     - (iv) right to scholarships and such other forms of aid provided by the state government.

The above provision was based on Article 35-A of the Constitution of India. This Article was inserted in the constitution by "The Constitution (Application to Jammu and Kashmir) Order, 1954". This order was issued by the President under Article 370 of the Constitution which had provided a special status to the erstwhile state of Jammu and Kashmir. In 2019, this special status was abolished by a new presidential order known as "The Constitution (Application to Jammu and Kashmir) Order, 2019". This order superseded the earlier 1954 order[3].

The Constitution of India, like that of Canada, has introduced the system of single citizenship and provided uniform rights (except in few cases) for the people of India to promote the feeling of fraternity and unity among them and to build an integrated Indian nation. Despite this, India has been witnessing the communal riots, class conflicts, caste wars, linguistic clashes and

[1]By virtue of Article 371-D inserted by the 32nd Constitutional Amendment Act, 1973.

[2]Article 371D has been extended to the State of Telangana by the Andhra Pradesh Reorganisation Act, 2014.

[3]Further, the Jammu and Kashmir Reorganisation Act, 2019, bifurcated the erstwhile State of Jammu and Kashmir into two separate Union territories, namely, the Union territory of Jammu & Kashmir and the Union territory of Ladakh.

ethnic disputes. Thus, the cherished goal of the founding fathers and the Constitution-makers to build an united and integrated Indian nation has not been fully realised.

CONSTITUTIONAL PROVISIONS

The Constitution deals with the citizenship from Articles 5 to 11 under Part II. However, it contains neither any permanent nor any elaborate provisions in this regard. It only identifies the persons who became citizens of India at its commencement (i.e., on January 26, 1950). It does not deal with the problem of acquisition or loss of citizenship subsequent to its commencement. It empowers the Parliament to enact a law to provide for such matters and any other matter relating to citizenship. Accordingly, the Parliament has enacted the Citizenship Act (1955), which has been amended from time to time.

According to the Constitution, the following four categories of persons became the citizens of India at its commencement i.e., on January 26, 1950:

1. A person who had his/her domicile in India and also fulfilled any one of the three conditions, viz., if he/she was born in India; or if either of his/her parents was born in India; or if he/she has been ordinarily resident in India for five years immediately before the commencement of the Constitution, became a citizen of India.
2. A person who migrated to India from Pakistan became an Indian citizen if he/she or either of their parents or any of their grandparents was born in undivided India and also fulfilled any one of the two conditions viz., in case he/she migrated to India before July 19, 1948[4], he/she had been ordinarily resident in India since the date of his/her migration; or in case he/she migrated to India on or after July 19, 1948, he/she had been registered as a citizen of India. But, a person could be so registered only if he/she had been resident in India for six months preceding the date of his/her application for registration.
3. A person who migrated to Pakistan from India after March 1, 1947, but later returned to India for resettlement could become an Indian citizen. For this, he/she had to be resident in India for six months preceding the date of his/her application for registration[5].
4. A person who, or any of whose parents or grandparents, was born in undivided India but who is ordinarily residing outside India shall become an Indian citizen if he/she has been registered as a citizen of India by the diplomatic or consular representative of India in the country of his/her residence, whether before or after the commencement of the Constitution. Thus, this provision covers the overseas Indians who may want to acquire Indian citizenship.

To sum up, these provisions deal with the citizenship of (a) persons domiciled in India; (b) persons migrated from Pakistan; (c) persons migrated to Pakistan but later returned; and (d) persons of Indian origin residing outside India.

The other constitutional provisions with respect to the citizenship are as follows:

1. No person shall be a citizen of India or be deemed to be a citizen of India, if he/she has voluntarily acquired the citizenship of any foreign state.
2. Every person who is or is deemed to be a citizen of India shall continue to be such citizen, subject to the provisions of any law made by Parliament.
3. Parliament shall have the power to make any provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship.

[4]On this date, the permit system for such migration was introduced.

[5]This provision refers to migration after 1 March, 1947 but before 26 January, 1950. The question of citizenship of persons who migrated after 26 January, 1950, has to be decided under the provisions of the Citizenship Act, 1955.

CITIZENSHIP ACT, 1955

The Citizenship Act (1955) provides for acquisition and loss of citizenship after the commencement of the Constitution.

Originally, the Citizenship Act (1955) also provided for the Commonwealth Citizenship. But, this provision was repealed by the Citizenship (Amendment) Act, 2003.

Acquisition of Citizenship

The Citizenship Act of 1955 prescribes five ways of acquiring citizenship, viz, birth, descent, registration, naturalisation and incorporation of territory:

1. By Birth A person born in India on or after January 26, 1950 but before July 1, 1987 is a citizen of India by birth irrespective of the nationality of his/her parents.

A person born in India on or after July 1, 1987 but before December 3, 2004 is considered as a citizen of India only if either of his/her parents is a citizen of India at the time of his/her birth.

Further, those born in India on or after December 3, 2004 are considered citizens of India only if both of their parents are citizens of India or one of whose parents is a citizen of India and the other is not an illegal migrant at the time of their birth.

The children of foreign diplomats posted in India and enemy aliens cannot acquire Indian citizenship by birth.

2. By Descent A person born outside India on or after January 26, 1950 but before December 10, 1992 is a citizen of India by descent, if his/her father was a citizen of India at the time of his/her birth.

A person born outside India on or after December 10, 1992 is considered as a citizen of India if either of his/her parents is a citizen of India at the time of his/her birth.

From December 3, 2004 onwards, a person born outside India shall not be a citizen of India by descent, unless his/her birth is registered at an Indian consulate within one year of the date of birth or with the permission of the Central Government, after the expiry of the said period. An application, for registration of the birth of a minor child, to an Indian consulate shall be accompanied by an undertaking in writing from the parents of such minor child that he or she does not hold the passport of another country.

Further, a minor who is a citizen of India by virtue of descent and is also a citizen of any other country shall cease to be a citizen of India if he or she does not renounce the citizenship or nationality of another country within six months of his/her attaining full age.

3. By Registration The Central Government may register as a citizen of India any person (not being an illegal migrant) if he or she belongs to any of the following categories, namely:-

(a) a person of Indian origin who is ordinarily resident in India for seven years before making an application for registration;
(b) a person of Indian origin who is ordinarily resident in any country or place outside undivided India;
(c) a person who is married to a citizen of India and is ordinarily resident in India for seven years before making an application for registration;
(d) minor children of persons who are citizens of India;
(e) a person of full age and capacity whose parents are registered as citizens of India;
(f) a person of full age and capacity who, or either of his/her parents, was earlier citizen of independent India, and is ordinarily resident in India for twelve months immediately before making an application for registration;
(g) a person of full age and capacity who has been registered as an overseas citizen of India cardholder for five years, and who is ordinarily resident in India for twelve months before making an application for registration.

A person shall be deemed to be of Indian origin if he or she, or either of their parents,

was born in undivided India or in such other territory which became part of India after the August 15, 1947.

All the above categories of persons must take an oath of allegiance before they are registered as citizens of India[6].

4. By Naturalisation The Central Government may grant a certificate of naturalisation to any person (not being an illegal migrant) if he or she possesses the following qualifications:

(a) that he/she is not a subject or citizen of any country where citizens of India are prevented from becoming subjects or citizens of that country by naturalisation;

(b) that, if he/she is a citizen of any country, they undertake to renounce the citizenship of that country in the event of their application for Indian citizenship being accepted;

(c) that he/she has either resided in India or been in the service of a Government in India or partly the one and partly the other, throughout the period of twelve months immediately preceding the date of the application;

(d) that during the fourteen years immediately preceding the said period of twelve months, he/she has either resided in India or been in the service of a Government in India, or partly the one and partly the other, for periods amounting in the aggregate to not less than eleven years. However, the Citizenship (Amendment) Act, 2019, has reduced this aggregate period of residence or service of Government in India to not less than five years for the person belonging to Hindu, Sikh, Buddhist, Jain, Parsi or Christian community in Afghanistan, Bangladesh or Pakistan.

(e) that he/she is of good character;

(f) that he/she has an adequate knowledge of a language specified in the Eighth Schedule to the Constitution[7]; and

(g) that in the event of a certificate of naturalisation being granted to him/her, he/she intends to reside in India, or to enter into or continue in, service under a Government in India or under an international organisation of which India is a member or under a society, company or body of persons established in India.

However, the Government of India may waive all or any of the above conditions for naturalisation in the case of a person who has rendered distinguished service to the science, philosophy, art, literature, world peace or human progress.

Every naturalised citizen must take an oath of allegiance to the Constitution of India.[8]

5. By Incorporation of Territory If any foreign territory becomes a part of India, the Government of India specifies the persons who among the people of the territory shall be the citizens of India. Such persons become the citizens of India from the notified date. For example, when Pondicherry became a part of India, the Government of India issued the Citizenship (Pondicherry) Order (1962), under the Citizenship Act (1955).

6. Special Provisions as to Citizenship of Persons Covered by the Assam Accord The Citizenship (Amendment) Act, 1985, added the following special provisions as to citizenship of persons covered by the Assam Accord (which related to the foreigners' issue):

(a) All persons of Indian origin who came to Assam before January 1, 1966, from Bangladesh and who have been ordinarily residents in Assam since the date of their entry into Assam shall be deemed to be citizens of India as from January 1, 1966.

[6]The form of the oath is as follows:
I, A/B..... do solemnly affirm (or swear) that I will bear true faith and allegiance to the Constitution of India as by law established, and that I will faithfully observe the laws of India and fulfill my duties as a citizen of India.

[7]The 8th Schedule of the Constitution recognises presently 22 (originally 14) languages.

[8]Same as footnote 6 above.

(b) Every person of Indian origin who came to Assam on or after January 1, 1966 but before March 25, 1971 from Bangladesh and who has been ordinarily resident in Assam since the date of his/her entry to Assam and who has been detected to be a foreigner shall register himself. Such a registered person shall be deemed to be a citizen of India for all purposes as from the date of expiry of a period of ten years from the date of detection as a foreigner. But, in the intervening period of ten years, he/she shall have the same rights and obligations as a citizen of India, excepting the right to vote.

7. Special Provisions as to Citizenship of Persons Migrated from Afghanistan, Bangladesh or Pakistan The Citizenship (Amendment) Act, 2019, added the following special provisions as to the citizenship of migrants belonging to Hindu, Sikh, Buddhist, Jain, Parsi or Christian communities from Afghanistan, Bangladesh or Pakistan who entered into India on or before December 31, 2014 and who have been exempted from the adverse penal consequences of the passport (Entry into India) Act, 1920 and the Foreigners Act, 1946:

(a) The Central Government may grant a certificate of registration or certificate of naturalisation to such a person on the fulfilment of the specified conditions for registration or qualifications for naturalisation. Such a person who has been granted the certificate of registration or certificate of naturalisaiton shall be deemed to be a citizen of India from the date of his/her entry into India.

(b) Any proceeding pending against such a person in respect of illegal migration or citizenship shall stand abated on the conferment of citizenship to him.

(c) These special provisions are not applicable to tribal area of Assam, Meghalaya, Mizoram or Tripura as included in the Sixth Schedule to the Constitution and the area covered under "The Inner Line" notified under the Bengal Eastern Frontier Regulation, 1873.

Before the enactment of the Citizenship (Amendment) Act, 2019, the migrants belonging to Hindu, Sikh, Buddhist, Jain, Parsi or Christian communities from Afghanistan, Bangladesh or Pakistan who entered into India without valid passport and other travel documents or if the validity of their passport and other documents had expired were reggarded as illegal migrants and were ineligible to apply for Indian citizenship under the provisions (registration or naturalisaiton) of the Citizenship Act, 1955.

In 2015, the Central Government exempted the said migrants from the adverse penal consequences of the passport (Entry into India) Act, 1920 and the Foreigners Act, 1946. Subsequently, in 2016, the Central Government also made them eligible for long term visa to stay in India.

With the enactment of the Citizenship (Amendment) Act, 2019, the said migrants became eligible for Indian citizenship. This Act came into force on January 10, 2020.

Loss of Citizenship

The Citizenship Act (1955) prescribes three ways of losing citizenship whether acquired under the Act or prior to it under the Constitution, viz, renunciation, termination and deprivation:

1. By Renunciation Any citizen of India of full age and capacity can make a declaration renouncing his/her Indian citizenship. Upon the registration of that declaration, that person ceases to be a citizen of India. However, if such a declaration is made during a war in which India is engaged, its registration shall be withheld by the Central Government.

Further, when a person renounces his/her Indian citizenship, every minor child of that person also loses Indian citizenship. However, when such a child attains the age of eighteen,

he/she may (within one year) resume Indian citizenship.

2. By Termination When an Indian citizen voluntarily (consciously, knowingly and without duress, undue influence or compulsion) acquires the citizenship of another country, his/her Indian citizenship automatically terminates. This provision, however, does not apply during a war in which India is engaged.

3. By Deprivation It is a compulsory termination of Indian citizenship by the Central government, if:

(a) the citizen has obtained the citizenship by fraud:
(b) the citizen has shown disloyalty to the Constitution of India:
(c) the citizen has unlawfully traded or communicated with the enemy during a war;
(d) the citizen has, within five years after registration or naturalisation, been imprisoned in any country for two years; and
(e) the citizen has been ordinarily resident out of India for seven years continuously.[9]

OVERSEAS CITIZENSHIP OF INDIA

In September 2000, the Government of India (Ministry of External Affairs) had set-up a High Level Committee on the Indian Diaspora under the Chairmanship of L.M. Singhvi. The mandate of the Committee was to conduct a comprehensive study of the global Indian Diaspora and to recommend measures for a constructive relationship with them.

The committee submitted its report in January, 2002. It recommended the amendment of the Citizenship Act (1955) to provide for grant of dual citizenship to the Persons of Indian Origin (PIOs) belonging to certain specified countries.

Accordingly, the Citizenship (Amendment) Act, 2003, made provision for acquisition of Overseas Citizenship of India (OCI) by the PIOs of 16 specified countries other than Pakistan and Bangladesh. It also omitted all provisions recognising, or relating to the Commonwealth Citizenship from the Principal Act.

Later, the Citizenship (Amendment) Act, 2005, expanded the scope of grant of OCI for PIOs of all countries except Pakistan and Bangladesh as long as their home countries allow dual citizenship under their local laws. It must be noted here that the OCI is not actually a dual citizenships as the Indian Constitution forbids dual citizenship or dual nationality (Article 9).

Again, the Citizenship (Amendment) Act, 2015, has modified the provisions pertaining to the OCI in the Principal Act. It has introduced a new scheme called "Overseas Citizen of India Cardholder" by merging the PIO card scheme and the OCI card scheme.

The PIO card scheme was introduced on August 19, 2002 and thereafter the OCI card scheme was introduced w.e.f. December 2, 2005. Both the schemes were running in parallel even though the OCI card scheme had become more popular. This was causing unnecessary confusion in the minds of applicants. Keeping in view some problems being faced by applicants and to provide enhanced facilities to them, the Government of India decided to formulate one single scheme after merging the PIO and OCI schemes, containing positive attributes of both. Hence, for achieving this objective, the Citizenship (Amendment) Act, 2015, was enacted. The PIO scheme was rescinded w.e.f. January 9, 2015 and it was also notified that all existing PIO cardholders shall be deemed to be OCI cardholders w.e.f. January 9, 2015.[10]

[9]This will not apply if he/she is a student abroad, or is in the service of a government in India or an international organisation of which India is a member, or has registered annually at an Indian consulate his/her intention to retain his/her Indian citizenship.

[10]Annual Report 2015-16, Ministry of Home Affairs, Government of India, p. 262.

The Citizenship (Amendment) Act, 2015, replaced the nomenclature of "Overseas Citizen of India" with that of "Overseas Citizen of India Cardholder" and made the following provisions in the Principal Act:

I. Registration of Overseas Citizen of India Cardholder

The Central Government may register as an overseas citizen of India cardholder–

(a) any person of full age and capacity,–
  (i) who is a citizen of another country, but was a citizen of India at the time of, or at any time after the commencement of the Constitution; or
  (ii) who is a citizen of another country, but was eligible to become a citizen of India at the time of the commencement of the Constitution; or
  (iii) who is a citizen of another country, but belonged to a territory that became part of India after the 15th August, 1947; or
  (iv) who is a child or a grandchild or a great grandchild of such a citizen; or

(b) a person, who is a minor child of a person mentioned in above clause (a); or

(c) a person, who is a minor child, and whose both parents are citizens of India or one of the parents is a citizen of India; or

(d) spouse of foreign origin of a citizen of India or spouse of foreign origin of an Overseas Citizen of India Cardholder and whose marriage has been registered and subsisted for a continuous period of not less than two years immediately preceding the presentation of the application.

But, a person, who or either of whose parents or grandparents or great grandparents is or had been a citizen of Pakistan, Bangladesh or such other country as the Central Government may specify, shall not be eligible for registration as an Overseas Citizen of India Cardholder.

II. Conferment of Rights on Overseas Citizen of India Cardholder

(1) An overseas citizen of India cardholder shall be entitled to such rights, as the Central Government may specify in this behalf. These are mentioned in Table 7.1 (under serial number 7).

(2) An overseas citizen of India cardholder shall not be entitled to the following rights (which are conferred on a citizen of India)–
  (a) He/she shall not be entitled to the right to equality of opportunity in matters of public employment (Article 16).
  (b) He/she shall not be eligible for election as President (Article 58).
  (c) He/she shall not be eligible for election as Vice-President (Article 66).
  (d) He/she shall not be eligible for appointment as a Judge of the Supreme Court (Article 124).
  (e) He/she shall not be eligible for appointment as a Judge of the High Court (Article 217).
  (f) He/she shall not be entitled for registration as a voter.
  (g) He/she shall not be eligible for being a member of the House of the People or of the Council of States.
  (h) He/she shall not be eligible for being a member of the State Legislative Assembly or the State Legislative Council.
  (i) He/she shall not be eligible for appointment to public services and posts in connection with affairs of the Union or of any State except for appointment in such services and posts as the Central Government may specify.

III. Renunciation of Overseas Citizen of India Card

(1) Any overseas citizen of India cardholder can make a declaration renouncing his/her overseas citizen of India

cardholder status. After that declaration is registered by the Central Government, such person ceases to be an overseas citizen of India cardholder.

(2) Where a person ceases to be an overseas citizen of India cardholder, the spouse of foreign origin of that person (who has obtained overseas citizen of India card) and every minor child of that person (registered as an overseas citizen of India cardholder) also ceases to be an overseas citizen of India cardholder.

IV. Cancellation of Registration as Overseas Citizen of India Cardholder

The Central Government may cancel the registration of a person as an overseas citizen of India cardholder, if it is satisfied that—

(a) the registration as an overseas citizen of India cardholder was obtained by means of fraud, false representation or the concealment of any material fact; or

(b) the overseas citizen of India cardholder has shown disaffection towards the Constitution of India; or

(c) the overseas citizen of India cardholder has, during any war in which India may be engaged, unlawfully traded or communicated with an enemy; or

(d) the overseas citizen of India cardholder has, within five years after registration, been sentenced to imprisonment for a term of not less than two years; or

(e) the overseas citizen of India cardholder has violated the provisions of the Citizenship Act (1955) or the provisions of any other law as may be specified by the Central Government. This provision was added by the Citizenship (Amendment) Act, 2019; or

(f) it is necessary so to do in the interests of the sovereignty and integrity of India, the security of India, friendly relations of India with any foreign country, or in the interests of the general public; or

(g) the marriage of an overseas citizen of India cardholder—

  (i) has been dissolved by a competent court of law or otherwise; or

  (ii) has not been dissolved but (during the subsistence of such marriage) he/she has solemnised marriage with any other person.

However, before the cancellation of his/her registration as an overseas citizen of India cardholder, he/she will be given a reasonable opportunity of being heard. This provision was also added by the Citizenship (Amendment) Act, 2019.

Table 7.1 Comparing NRI, PIO and OCI Cardholder[11]

Sl. No.	Elements of Comparison	Non-Resident Indian (NRI)	Person of Indian Origin (PIO)	Overseas Citizen of India (OCI) Cardholder
1.	Who?	An Indian citizen who is ordinarily residing outside India and holds an Indian Passport	A person who or whose any of ancestors was an Indian national and who is presently holding another country's citizenship / nationality i.e. he/she is holding foreign passport	A person registered as Overseas Citizen of India (OCI) Cardholder under the Citizenship Act, 1955

(Contd.)

[11]This table is downloaded from the website of Ministry of Home Affairs, Government of India.

Sl. No.	Elements of Comparison	Non-Resident Indian (NRI)	Person of Indian Origin (PIO)	Overseas Citizen of India (OCI) Cardholder
2.	Who is eligible?	--	--	Following categories of foreign nationals are eligible for registration as Overseas Citizen of India (OCI) Cardholder:- (i) Who was a citizen of India at the time of, or at any time after the commencement of the Constitution i.e. 26.01.1950; or (ii) who was eligible to become a citizen of India on 26.01.1950; or (iii) who belonged to a territory that became part of India after 15.08.1947; or (iv) who is a child or a grandchild or a great grandchild of such a citizen; or (v) who is a minor child of such persons mentioned above; or (vi) who is a minor child and whose both parents are citizens of India or one of the parents is a citizen of India; or (vii) spouse of foreign origin of a citizen of India or spouse of foreign origin of an Overseas Citizen of India Cardholder registered under the Citizenship Act, 1955 and whose marriage has been registered and subsisted for a continuous period of not less than two years immediately preceding the presentation of the application.
3.	How can one get?	--	--	Eligible persons to apply online.
4.	Where to apply?	--	--	(i) Applicants outside India: (a) The Indian Mission/Post having jurisdiction over the country of which applicant is a citizen; or (b) If he/she is not living in the country of his/her citizenship, to the Indian Mission/Post having jurisdiction over the country of which the applicant is ordinarily resident. (ii) Applicants in India: If the applicant is residing in India, to the Foreigners Regional Registration Offices (FRROs) according to their jurisdictional control. Note: For the above purpose, 'ordinarily resident' will mean a person staying in a particular country or in India for a continuous period of 6 months.
5.	Fees?	--	--	(a) in case of application submitted in Indian Mission/Post abroad–US $275 or equivalent in local currency. (b) in case of application submitted in India–₹15,000/-

Sl. No.	Elements of Comparison	Non-Resident Indian (NRI)	Person of Indian Origin (PIO)	Overseas Citizen of India (OCI) Cardholder
6.	Which nationals are ineligible?	--	--	No person, who or either of whose parents or grandparents or great grandparents is or had been a citizen of Pakistan, Bangladesh or such other country as the Central Government may specify, shall be eligible for registration as an Overseas Citizen of India Cardholder.
7.	What benefits one is entitled to?	All benefits as available to Indian citizens subject to notifications issued by the Government from time to time	No specific benefits	(i) Multiple entry lifelong visa for visiting India for any purpose. However, the OCI Cardholder is required to obtain a special permission or a special permit from the competent authority or the FRROs or the Indian Mission concerned for understanding the following activities: (a) to undertake research; (b) to undertake any Missionary or Tabligh or Mountaineering or Journalistic activities; (c) to undertake internship in any foreign Diplomatic Missions or foreign Government organisations in India or to the take up employment in any foreign Diplomatic Missions in India; (d) to visit any place which falls within the Protected or Restricted or Prohibited areas as notified by the Central Government or competent authority. (ii) Exemption from registration with Foreigners Regional Registration Officer (FRRO) or Foreigners Registration Officer (FRO) for any length of stay in India. (iii) Parity with Indian nationals in the matter of: (a) tariffs in air fares in domestic sectors in India; and (b) entry fees to be charged for visiting national parks, wildlife sanctuaries, the national monuments, historical sites and museums in India. (iv) Parity with Non-Resident Indians in the matter of: (a) inter-country adoption of Indian children;

(Contd.)

Sl. No.	Elements of Comparison	Non-Resident Indian (NRI)	Person of Indian Origin (PIO)	Overseas Citizen of India (OCI) Cardholder
				(b) appearing for the all India entrance tests such as National Eligibility cum Entrance Test, Joint Entrance Examination (Mains/ Advanced) or such other tests to make them eligible for admission only against any Non-Resident Indian seat or any super numeracy seat. However, the OCI Cardholder is not eligible for admission against any seat reserved exclusively for Indian citizens. (c) purchase or sale of immovable properties other than agricultural land or farm house or plantation property; and (d) Pursuing the following professions in India: – doctors, dentists, nurses and pharmacists; – advocates; – architects; and – chartered accountants (v) The OCI Cardholder shall have the same rights and privileges as a foreigner in respect of all other economic, financial and educational fields not specified in the notification issued by the Central Government or the rights and privileges not covered in the notifications issued by the Reserve Bank of India under the Foreign Exchange Management Act, 1999. (vi) The OCI Cardholders are eligible for appointment as teaching faculty in IITs, NITs, IIMs, IISERs, IISc, Central Universities and in the new AIIMS set up under Pradhan Mantri Swasthya Suraksha Yojana.
8.	Does he/she require visa for visiting India?	No	Yes	OCI Card is itself a multiple entry lifelong visa for visiting India.
9.	Is he/she required to register with the local police authorities in India?	No	Yes if the period of stay is for more than 180 days	No

Sl. No.	Elements of Comparison	Non-Resident Indian (NRI)	Person of Indian Origin (PIO)	Overseas Citizen of India (OCI) Cardholder
10.	What activities can be undertaken in India?	All Activities	Activity as per the type of visa obtained	All activities except certain activities for which prior permission or special permit is required.
11.	How can one acquire Indian citizenship?	He/she is an Indian citizen	As per the Citizenship Act, 1955, he/she has to be ordinarily resident in India for a period of 7 years before making an application for registration.	As per the Citizenship Act, 1955, a person registered as an OCI cardholder for 5 years and who is ordinarily resident in India for twelve months before making an application for registration is eligible for grant of Indian citizenship.

Table 7.2 Articles Related to Citizenship at a Glance

Article No.	Subject Matter
5.	Citizenship at the commencement of the Constitution
6.	Rights of citizenship of certain persons who have migrated to India from Pakistan
7.	Rights of citizenship of certain migrants to Pakistan
8.	Rights of citizenship of certain persons of Indian origin residing outside India
9.	Persons voluntarily acquiring citizenship of a foreign State not to be citizens
10.	Continuance of the rights of citizenship
11.	Parliament to regulate the right of citizenship by law

CHAPTER 8 Fundamental Rights

The Fundamental Rights are enshrined in Part III of the Constitution from Articles 12 to 35. In this regard, the framers of the Constitution derived inspiration from the Constitution of USA (i.e., Bill of Rights).

Part III of the Constitution is rightly described as the *Magna Carta* of India.[1] It contains a very long and comprehensive list of 'justiciable' Fundamental Rights. In fact, the Fundamental Rights in our Constitution are more elaborate than those found in the Constitution of any other country in the world, including the USA.

The Fundamental Rights are guaranteed by the Constitution to all persons without any discrimination. They uphold the equality of all individuals, the dignity of the individual, the larger public interest and unity of the nation.

The Fundamental Rights are meant for promoting the ideal of political democracy. They prevent the establishment of an authoritarian and despotic rule in the country, and protect the liberties and freedoms of the people against the invasion by the State. They operate as limitations on the tyranny of the executive and arbitrary laws of the legislature. In short, they aim at establishing 'a government of laws and not of men'.

The Fundamental Rights are named so because they are guaranteed and protected by the Constitution, which is the fundamental law of the land. They are 'fundamental' also in the sense that they are most essential for the all-round development (material, intellectual, moral and spiritual) of the individuals.

Originally, the Constitution provided for seven Fundamental Rights viz,

1. Right to equality (Articles 14–18)
2. Right to freedom (Articles 19–22)
3. Right against exploitation (Articles 23–24)
4. Right to freedom of religion (Articles 25–28)
5. Cultural and educational rights (Articles 29–30)
6. Right to property (Article 31)
7. Right to constitutional remedies (Article 32)

However, the right to property was deleted from the list of Fundamental Rights by the 44th Amendment Act, 1978. It is made a legal right under Article 300-A in Part XII of the Constitution. So, at present, there are only six Fundamental Rights. These are mentioned in Table 8.1.

FEATURES OF FUNDAMENTAL RIGHTS

The Fundamental Rights guaranteed by the Constitution are characterised by the following:

1. Some of them are available only to the citizens while others are available to all persons whether citizens, foreigners or legal persons like corporations or companies. The Fundamental Rights that are

[1] 'Magna Carta' is the Charter of Rights issued by King John of England in 1215 under pressure from the barons. This is the first written document relating to the Fundamental Rights of citizens.

Table 8.1 Fundamental Rights at a Glance

Category	Consists of
1. Right to equality (Articles 14–18)	(a) Equality before law and equal protection of laws (Article 14). (b) Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth (Article 15). (c) Equality of opportunity in matters of public employment (Article 16). (d) Abolition of untouchability and prohibition of its practice (Article 17). (e) Abolition of titles except military and academic (Article 18).
2. Right to freedom (Articles 19–22)	(a) Protection of six rights regarding freedom of: (i) speech and expression, (ii) assembly, (iii) association, (iv) movement, (v) residence, and (vi) profession (Article 19). (b) Protection in respect of conviction for offences (Article 20). (c) Protection of life and personal liberty (Article 21). (d) Right to elementary education (Article 21A). (e) Protection against arrest and detention in certain cases (Article 22).
3. Right against exploitation (Articles 23–24)	(a) Prohibition of traffic in human beings and forced labour (Article 23). (b) Prohibition of employment of children in factories, etc. (Article 24).
4. Right to freedom of religion (Article 25–28)	(a) Freedom of conscience and free profession, practice and propagation of religion (Article 25). (b) Freedom to manage religious affairs (Article 26). (c) Freedom from payment of taxes for promotion of any religion (Article 27). (d) Freedom from attending religious instruction or worship in certain educational institutions (Article 28).
5. Cultural and educational rights (Articles 29–30)	(a) Protection of language, script and culture of minorities (Article 29). (b) Right of minorities to establish and administer educational institutions (Article 30).
6. Right to constitutional remedies (Article 32)	Right to move the Supreme Court for the enforcement of fundamental rights including the writs of (i) *habeas corpus*, (ii) *mandamus*, (iii) prohibition, (iv) *certiorari*, and (v) *quo war-rento* (Article 32).

available to foreigners are mentioned in Table 8.2.

2. They are not absolute but qualified. The state can impose reasonable restrictions on them. However, whether such restrictions are reasonable or not is to be decided by the courts. Thus, they strike a balance between the rights of the individual and those of the society as a whole, between individual liberty and social control.
3. All of them are available against the arbitrary action of the state. However, some of them are also available against the action of private individuals.
4. Some of them are negative in character, that is, place limitations on the authority of the State, while others are positive in nature, conferring certain privileges on the persons.
5. They are justiciable, allowing persons to move the courts for their enforcement, if and when they are violated.
6. They are defended and guaranteed by the Supreme Court. Hence, the aggrieved person can directly go to the Supreme Court, not necessarily by way of appeal against the judgement of the high courts.
7. They are not sacrosanct or permanent. The Parliament can curtail or repeal them but only by a constitutional amendment act and not by an ordinary act. Moreover, this can be done without affecting the 'basic structure' of the Constitution.

Table 8.2 Fundamental Rights (FR) of Foreigners

FR available only to citizens and not to foreigners	FR available to both citizens and foreigners (except enemy aliens)
1. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth (Article 15).	1. Equality before law and equal protection of laws (Article 14).
2. Equality of opportunity in matters of public employment (Article 16).	2. Protection in respect of conviction for offences (Article 20).
3. Protection of six rights regarding freedom of: (i) speech and expression, (ii) assembly, (iii) association, (iv) movement, (v) residence, and (vi) profession (Article 19).	3. Protection of life and personal liberty (Article 21).
4. Protection of language, script and culture of minorities (Article 29).	4. Right to elementary education (Article 21A).
5. Right of minorities to establish and administer educational institutions (Article 30).	5. Protection against arrest and detention in certain cases (Article 22).
	6. Prohibition of traffic in human beings and forced labour (Article 23).
	7. Prohibition of employment of children in factories etc., (Article 24).
	8. Freedom of conscience and free profession, practice and propagation of religion (Article 25).
	9. Freedom to manage religious affairs (Article 26).
	10. Freedom from payment of taxes for promotion of any religion (Article 27).
	11. Freedom from attending religious instruction or worship in certain educational institutions (Article 28).

8. They can be suspended during the operation of a National Emergency except the rights guaranteed by Articles 20 and 21. Further, the six rights guaranteed by Article 19 are automatically suspended only when emergency is declared on the grounds of war or external aggression (i.e., external emergency) and not on the ground of armed rebellion (i.e., internal emergency).
9. Their scope of operation is limited by Article 31A (saving of laws providing for acquisition of estates, etc.), Article 31B (validation of certain acts and regulations included in the 9th Schedule) and Article 31C (saving of laws giving effect to certain directive principles).
10. Their application to the members of armed forces, para-military forces, police forces, intelligence agencies and analogous services can be restricted or abrogated by the Parliament (Article 33).
11. Their application can be restricted while martial law is in force in any area. Martial law means 'military rule' imposed under abnormal circumstances to restore order (Article 34). It is different from the imposition of national emergency.
12. Most of them are directly enforceable (self-executory) while a few of them can be enforced on the basis of a law made for giving effect to them. Such a law can be made only by the Parliament and not by state legislatures so that uniformity throughout the country is maintained (Article 35).

DEFINITION OF STATE

The term 'State' has been used in different provisions concerning the fundamental rights. Hence, Article 12 has defined the term for the purposes of Part III. According to it, the State includes the following:

(a) Government and Parliament of India, that is, executive and legislative organs of the Union government.
(b) Government and legislature of states, that is, executive and legislative organs of state government.
(c) All local authorities, that is, municipalities, panchayats, district boards, improvement trusts, etc.
(d) All other authorities, that is, statutory or non-statutory authorities like LIC, ONGC, SAIL, etc.

Thus, State has been defined in a wider sense so as to include all its agencies. It is the actions of these agencies that can be challenged in the courts as violating the Fundamental Rights.

According to the Supreme Court, even a private body or an agency working as an instrument of the State falls within the meaning of the 'State' under Article 12.

LAWS INCONSISTENT WITH FUNDAMENTAL RIGHTS

Article 13 declares that all laws that are inconsistent with or in derogation of any of the fundamental rights shall be void. In other words, it expressively provides for the doctrine of judicial review. This power has been conferred on the Supreme Court (Article 32) and the high courts (Article 226) that can declare a law unconstitutional and invalid on the ground of contravention of any of the Fundamental Rights.

The term 'law' in Article 13 has been given a wide connotation so as to include the following:

(a) Permanent laws enacted by the Parliament or the state legislatures;
(b) Temporary laws like ordinances issued by the president or the state governors;
(c) Statutory instruments in the nature of delegated legislation (executive legislation) like order, bye-law, rule, regulation or notification; and
(d) Non-legislative sources of law, that is, custom or usage having the force of law.

Thus, not only a legislation but any of the above can be challenged in the courts as violating a Fundamental Right and hence, can be declared as void.

Further, Article 13 declares that a constitutional amendment is not a law and hence cannot be challenged. However, the Supreme Court held in the *Kesavananda Bharati* case[2] (1973) that a Constitutional amendment can be challenged on the ground that it violates a fundamental right that forms a part of the 'basic structure' of the Constitution and hence, can be declared as void.

RIGHT TO EQUALITY

1. Equality before Law and Equal Protection of Laws

Article 14 says that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. This provision confers rights on all persons whether citizens or foreigners. Moreover, the word 'person' includes legal persons, viz, statutory corporations, companies, registered societies or any other type of legal person.

The concept of 'equality before law' is of British origin while the concept of 'equal protection of laws' has been taken from the American Constitution. The first concept connotes: (a) the absence of any special privileges in favour of any person, (b) the equal subjection of all persons to the ordinary law of the land administered by ordinary law courts, and (c) no person (whether rich or poor, high or low, official or non-official) is above the law.

The second concept, on the other hand, connotes: (a) the equality of treatment under

[2] *Kesavananda Bharati* vs. *State of Kerala* (1973).

equal circumstances, both in the privileges conferred and liabilities imposed by the laws, (b) the similar application of the same laws to all persons who are similarly situated, and (c) the like should be treated alike without any discrimination. Thus, the former is a negative concept while the latter is a positive concept. However, both of them aim at establishing equality of legal status, opportunity and justice.

The Supreme Court held that where equals and unequals are treated differently, Article 14 does not apply. While Article 14 forbids class legislation, it permits reasonable classification of persons, objects and transactions by the law. But the classification should not be arbitrary, artificial or evasive. Rather, it should be based on an intelligible differential and substantial distinction.

Rule of Law The concept of 'equality before law' is an element of the concept of 'Rule of Law', propounded by A.V. Dicey, the British jurist. His concept has the following three elements or aspects:

(i) Absence of arbitrary power, that is, no man can be punished except for a breach of law.

(ii) Equality before the law, that is, equal subjection of all citizens (rich or poor, high or low, official or non-official) to the ordinary law of the land administered by the ordinary law courts[3].

(iii) The primacy of the rights of the individual, that is, the constitution is the result of the rights of the individual as defined and enforced by the courts of law rather than the constitution being the source of the individual rights.

[3]Dicey observe: "No man is above the law, but every man, whatever be his rank or condition, is subject to the ordinary law of the realm and amenable to the jurisdiction of the ordinary tribunals. Every official from the Prime Minister down to a constable or a collector of taxes, is under the same responsibility for every act done without legal justification as any other citizen". (A.V. Dicey, *Introduction to the Study of the Law of the Constitution*, Macmillan, 1931 Edition pp. 183–191).

The first and the second elements are applicable to the Indian System and not the third one. In the Indian System, the constitution is the source of the individual rights.

The Supreme Court held that the 'Rule of Law' as embodied in Article 14 is a 'basic feature' of the constitution. Hence, it cannot be destroyed even by an amendment.

Exceptions to Equality The rule of equality before law is not absolute and there are constitutional and other exceptions to it. These are mentioned below:

1. The President of India and the Governor of States enjoy the following immunities (Article 361):
   (i) The President or the Governor is not answerable to any court for the exercise and performance of the powers and duties of his/her office.
   (ii) No criminal proceedings shall be instituted or continued against the President or the Governor in any court during his/her term of office.
   (iii) No process for the arrest or imprisonment of the President or the Governor shall be issued from any court during his/her term of office.
   (iv) No civil proceedings against the President or the Governor shall be instituted during his/her term of office in any court in respect of any act done by him/her in his/her personal capacity, whether before or after he/she entered upon his/her office, until the expiration of two months next after notice has been delivered to him/her.
2. No person shall be liable to any civil or criminal proceedings in any court in respect of the publication in a newspaper (or by radio or television) of a substantially true report of any proceedings of either House of Parliament or either House of the Legislature of a State (Article 361-A).
3. No member of Parliament shall be liable to any proceedings in any court in respect of anything said or any vote

given by him/her in Parliament or any committee thereof (Article 105).

4. No member of the Legislature of a state shall be liable to any proceedings in any court in respect of anything said or any vote given by him/her in the Legislature or any committee thereof (Article 194).
5. Article 31-C is an exception to Article 14. It provides that the laws made by the state for implementing the Directive Principles contained in clause (b) or clause (c) of Article 39 cannot be challenged on the ground that they are violative of Article 14. The Supreme Court held that "where Article 31-C comes in, Article 14 goes out".
6. The foreign sovereigns (rulers), ambassadors and diplomats enjoy immunity from criminal and civil proceedings.
7. The UNO and its agencies enjoy the diplomatic immunity.

2. Prohibition of Discrimination on Certain Grounds

Article 15 provides that the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex or place of birth. The two crucial words in this provision are 'discrimination' and 'only'. The word 'discrimination' means 'to make an adverse distinction with regard to' or 'to distinguish unfavourably from others'. The use of the word 'only' connotes that discrimination on other grounds is not prohibited.

The second provision of Article 15 says that no citizen shall be subjected to any disability, liability, restriction or condition on grounds only of religion, race, caste, sex, or place of birth with regard to (a) access to shops, public restaurants, hotels and places of public entertainment; or (b) the use of wells, tanks, bathing ghats, road and places of public resort maintained wholly or partly by State funds or dedicated to the use of general public. This provision prohibits discrimination both by the State and private individuals, while the former provision prohibits discrimination only by the State.

There are four exceptions to this general rule of non-discrimination:

(a) The state is permitted to make any special provision for women and children. For example, reservation of seats for women in local bodies or provision of free education for children.

(b) The state is permitted to make any special provision for the advancement of any socially and educationally backward classes or for the scheduled castes and the scheduled tribes[4]. For example, reservation of seats or fee concessions in public educational institutions.

(c) The state is empowered to make any special provision for the advancement of any socially and educationally backward classes or for the scheduled castes and the scheduled tribes regarding their admission to educational institutions. This also includes the private educational institutions, whether aided or unaided by the state, except the minority educational institutions.

(d) The state is empowered to make any special provision for the advancement of any economically weaker sections. Further, the state is allowed to make a provision for the reservation of upto 10% of seats for such sections in admission to educational institutions including private educational institutions, whether aided or unaided by the state, except the minority educational institutions. This reservation of upto 10% would be in addition to the existing reservations. For this purpose, the economically weaker sections would be notified by the state from time to time on the basis of family income and other indicators of economic disadvantage.

The various provisions contained in Article 15 are summarised in Table 8.3.

Reservation for OBCs in Educational Institutions

The above exception(c) was added by the 93rd

[4]This provision was added by the First Amendment Act of 1951.

Table 8.3 Provisions of Article 15 (Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth) at a Glance

Article No.	Subject Matter
15(1)	The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.
15(2)	No citizen shall be subjected to any disability, liability, restriction or condition on grounds only of religion, race, caste, sex, place of birth or any of them with regard to the following: (a) access to shops, public restaurants, hotels and places of public entertainment; or (b) the use of walls, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.
15(3)	The State is not prevented from making any special provision for women and children.
15(4)	The State is not prevented from making any special provision for the advancement of any socially and educationally backwards classes or for the scheduled castes and scheduled tribes. This provision was added by the 1st Amendment Act, 1951.
15(5)	The State is not prevented from making any special provision for the advancement of any socially and educationally backwards classes or for the scheduled castes and the scheduled tribes regarding their admission to educational institutions. This also includes the private educational motivations, whether aided or unaided by the State, except the minority educational institutions. This provision was added by the 93rd Amendment Act, 2005.
15(6)	The State is not prevented from making the following: (a) any special provision for the advancement of any economically weaker sections; and (b) a provision for the reservation of upto 10% of seats for such sections in admission to educational institutions including private educational institutions, whether aided or unaided by the State (except the minority educational institutions). This provision was added by the 103rd Amendment Act, 2019.

Amendment Act of 2005. In order to give effect to this provision, the Centre enacted the Central Educational Institutions (Reservation in Admission) Act, 2006, providing a quota of 27% for candidates belonging to the Other Backward Classes (OBCs) in all central higher educational institutions including the Indian Institutes of Technology (IITs) and the Indian Institutes of Management (IIMs). In April 2008, the Supreme Court upheld the validity of both, the Amendment Act and the OBC Quota Act. But, the Court directed the central government to exclude the 'creamy layer' (advanced sections) among the OBCs while implementing the law.

The children of the following different categories of people belong to the 'creamy layer' among the OBCs and thus will not get the quota benefit:

1. Persons holding constitutional posts like President, Vice-President, Judges of SC and HCs, Chairman and Members of UPSC and SPSCs, CEC, CAG and so on.
2. Group 'A' / Class I and Group 'B' / Class II Officers of the All India, Central and State Services; and Employees holding equivalent posts in PSUs, Banks, Insurance Organisations, Universities etc., and also in private employment.
3. Persons who are in the rank of colonel and above in the Army and equivalent posts in the Navy, the Air Force and the Paramilitary Forces.
4. Professionals like doctors, lawyers, engineers, artists, authors, consultants and so on.
5. Persons engaged in trade, business and industry.
6. People holding agricultural land above a certain limit and vacant land or buildings in urban areas.

7. Persons having gross annual income of more than ₹8 lakh or possessing wealth above the exemption limit. In 1993, when the "creamy layer" ceiling was introduced, it was ₹1 lakh. It was subsequently revised to ₹2.5 lakh in 2004, ₹4.5 lakh in 2008, ₹6 lakh in 2013 and ₹8 lakh in 2017.

Reservation for EWSs in Educational Institutions The above exception (d) was added by the 103rd Amendment Act of 2019. In order to give effect to this provision, the central government issued an order (in 2019) providing 10% reservation to the Economically Weaker Sections (EWSs) in admission to educational institutions. The benefit of this reservation can be availed by the persons belonging to EWSs who are not covered under any of the existing schemes of reservations for SCs, STs and OBCs. The eligibility criteria laid down in this regard is as follows:

1. Persons whose family has gross annual income below ₹8 lakh are to be identified as EWSs for the benefit of reservation. The income would include income from all sources i.e., salary, agriculture, business, profession etc. and it would be income for the financial year prior to the year of application.
2. Persons whose family owns or possesses any one of the following assets are to be excluded from being identified as EWSs, irrespective of the family income:
   (a) 5 acres of Agricultural land and above.
   (b) Residential flat of 1000 sq.ft. and above.
   (c) Residential plot of 100 sq.yards and above in notified municipalities.
   (d) Residential plot of 200 sq.yards and above in areas other than the notified municipalities.
3. The property held by a family in different locations or different places / cities would be clubbed while applying the land or property holding test to determine EWS status.
4. Family for this purpose would include the person who seeks benefit of reservation, his/her parents and siblings below the age of 18 years as also his/her spouse and children below the age of 18 years.

3. Equality of Opportunity in Public Employment

Article 16 provides for equality of opportunity for all citizens in matters of employment or appointment to any office under the State. No citizen can be discriminated against or be ineligible for any employment or office under the State on grounds of only religion, race, caste, sex, descent, place of birth or residence.

There are four exceptions to this general rule of equality of opportunity in public employment:

(a) Parliament can prescribe residence as a condition for certain employment or appointment in a state or union territory or local authority or other authority. As the Public Employment (Requirement as to Residence) Act of 1957 expired in 1974, there is no such provision for any state except Andhra Pradesh[5] and Telangana[5a].

(b) The State can provide for reservation of appointments or posts in favour of any backward class that is not adequately represented in the state services. Also, the State is empowered to provide for reservation in promotions, with consequential seniority, in the services under the State in favour of the Scheduled castes and Scheduled tribes that are not adequately represented in the state services. Further, the State is empowered to consider the unfilled reserved vacancies of a year as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies are not to be combined with the vacancies of the year in which they are being filled up to determine the ceiling of 50% reservation on total number of vacancies of that year.

[5]By virtue of Article 371D inserted by the 32nd Amendment Act of 1973.

[5a]Article 371D has been extended to the state of Telangana by the Andhra Pradesh Reorganisation Act, 2014.

Table 8.4 Provisions of Article 16 (Equality of opportunity in matters of public employment) at a Glance

Article No.	Subject Matter
16(1)	There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.
16(2)	No citizen can be ineligible for or discriminated against any employment or office under the State on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them.
16(3)	Parliament is not prevented from making any law to prescribe residence as a requirement for certain employment or appointment to an office under the Government of a State or Union territory, or any local or other authority within them.
16(4)	The State is not prevented from making any provision for the reservation of appointments or posts in favour of any backward class which is not adequately represented in the services under the State.
16(4A)	The State is not prevented from making any provision for reservation in matters of promotion, with consequential seniority, in the services under the State in favour of the scheduled castes and scheduled tribes which are not adequately represented in the services under the State. This provision was added by the 77th Amendment Act, 1995. Later, the 85th Amendment Act, 2001 made a modification in this provision by including the consequential seniority.
16(4B)	The State is not prevented from considering the unfilled reserved vacancies of a year as a separate class of vacancies to be filled up in any succeeding year or years. Further, such class of vacancies are not to be combined with the vacancies of the year in which they are being filled up to determine the ceiling of 50% reservation on total number of vacancies of that year. This provision was added by the 81st Amendment Act, 2000.
16(5)	The operation of any law is not affected even though it provides that the incumbent of any religious or denominational institution or any member of its governing body should belong to that particular religion or denomination.
16(6)	The State is not prevented from making any provision for the reservation of upto 10% of appointments or posts in favour of any economically weaker sections. This provision was added by the 103rd Amendment Act, 2019.

(c) A law can provide that the incumbent of an office related to religious or denominational institution or a member of its governing body should belong to the particular religion or denomination. This means that the appointment of the office bearers in any religious or denominational institution can be restricted to the persons of that particular religion or denomination. In brief, the religious qualification can be prescribed by the law in this regard.

(d) The state is permitted to make a provision for the reservation of upto 10% of appointments or posts in favour of any economically weaker sections. This reservation of upto 10% would be in addition to the existing reservation. For this purpose, the economically weaker sections would be notified by the state from time to time on the basis of family income and other indicators of economic disadvantage.

The various provisions contained in Article 16 are summarised in Table 8.4.

Mandal Commission and Aftermath In 1979, the Morarji Desai Government appointed the Second[6] Backward Classes Commission under the chairmanship of B.P. Mandal, a Member of Parliament, in terms of Article 340 of the Constitution to investigate the conditions of the socially and educationally backward classes and suggest measures for their advancement. The commission submitted its report in 1980 and identified as many as 3743 castes as socially and educationally backward classes.

[6]The first Backward Classes Commission was appointed in 1953 under the chairmanship of Kaka Kalelkar. It submitted its report in 1955.

They constitute nearly 52% component of the population, excluding the scheduled castes (SCs) and the scheduled tribes (STs). The commission recommended for reservation of 27% government jobs for the Other Backward Classes (OBCs) so that the total reservation for all ((SCs, STs and OBCs) amounts to 50%.[7] It was after ten years in 1990 that the V.P. Singh Government declared reservation of 27% government jobs for the OBCs. Again in 1991, the Narasimha Rao Government introduced two changes: **(a)** preference to the poorer sections among the OBCs in the 27% quota, i.e., adoption of the economic criteria in granting reservation, and **(b)** reservation of another 10% of jobs for other economically backward sections who are not covered by any existing schemes of reservation.

In the Indra Sawhney case[8] (1992), also called as the Mandal case, the scope and extent of Article 16(4), which provides for reservation of jobs in favour of backward classes, has been examined thoroughly by the Supreme Court. Though the Court has rejected the additional reservation of 10% for other economically backward sections, it upheld the constitutional validity of 27% reservation for the OBCs with certain conditions, viz,

(a) The advanced sections among the OBCs (the creamy layer) should be excluded from the list of beneficiaries of reservation.

(b) No reservation in promotions; reservation should be confined to initial appointments only. Any *existing reservation* in promotions can continue for five years only (i.e., upto 1997).

(c) The total reserved quota should not exceed 50% except in some extraordinary situations. This rule should be applied every year.

(d) The 'carry forward rule' in case of unfilled (backlog) vacancies is valid. But it should not violate 50% rule.

(e) A permanent statutory body should be established to examine complaints of over-inclusion and under-inclusion in the list of OBCs.

(f) No relaxations in qualifying marks and standards of evaluation in matters of reservation in promotions due to the requirement of maintenance of efficiency in administration under Article 335.

With regard to the above rulings of the Supreme Court, the government has taken the following actions:

(a) Ram Nandan Committee was appointed to identify the creamy layer among the OBCs. It submitted its report in 1993, which was accepted.

(b) National Commission for Backward Classes was established in 1993 by an act of Parliament. Its mandate was to examine the complaints of under-inclusion, over-inclusion or non-inclusion of any class of citizens in the list of backward classes for the purpose of job reservation. Later, the 102nd Amendment Act of 2018 conferred a constitutional status on the commission and also enlarged its functions. For this purpose, the amendment inserted a new Article 338-B in the constitution.

(c) In order to nullify the ruling with regard to reservation in promotions, the 77th Amendment Act was enacted in 1995. It added a new provision in Article 16 that empowers the State to provide for reservation in promotions of any services under the State in favour of the SCs and STs that are not adequately represented in the state services. Again, the 85th Amendment Act of 2001 provides for 'consequential seniority' in the case of promotion by virtue of rule of reservation for the government servants belonging to the SCs and STs with retrospective effect from June 1995.

(d) The ruling with regard to backlog vacancies was nullified by the 81st Amendment Act of 2000. It added another new provision in Article 16 that empowers the State to consider the unfilled reserved vacancies of a year as a separate class of vacancies to be filled up in any succeeding year or years. Further, such class of

[7] In 1963, the Supreme Court ruled that more than 50% reservation of jobs in a single year would be unconstitutional.

[8] *Indra Sawhney* vs. *Union of India* (1992).

vacancies are not to be combined with the vacancies of the year in which they are being filled up to determine the ceiling of 50% reservation on total number of vacancies of that year. In brief, it ends the 50% ceiling on reservation in backlog vacancies.

(e) The 76th Amendment Act of 1994 has placed the Tamil Nadu Reservations Act[9] of 1993 in the Ninth Schedule to protect it from judicial review as it provided for 69 per cent of reservation, far exceeding the 50 per cent ceiling.

(f) In order to nullify the ruling with regard to relaxations in qualifying marks and standards of evaluation in matters of reservation in promotions, the 82nd Amendment Act was enacted in 2000. It added a new provision in Article 335 that empowers the state to make any provision in favour of the SCs and STs for relaxation in qualifying marks or lowering the standards of evaluation in matters of reservation in promotions.

Reservation for EWSs in Public Employment

The above exception (d) was added by the 103rd Amendment Act of 2019. In order to give effect to this provision, the central government issued an order (in 2019) providing 10% reservation to the Economically Weaker Sections (EWSs) in civil posts and services in the Government of India. The benefit of this reservation can be availed by the persons belonging to EWSs who are not covered under any of the existing schemes of reservation for SCs, STs and OBCs. The eligibility criteria laid down in this regard has already been explained under Article 15.

Further, the scientific and technical posts which satisfy all the following conditions can be exempted from the purview of this reservation:

(i) The posts should be in grades above the lower grade in Group A of the service concerned.

(ii) They should be classified as "scientific or technical" in terms of Cabinet Secretariat Order (1961), according to which scientific and technical posts for which qualifications in the natural sciences or exact sciences or applied sciences or in technology are prescribed and the incumbents of which have to use that knowledge in the discharge of their duties.

(iii) The posts should be for conducting research or for organizing, guiding and directing research.

4. Abolition of Untouchability

Article 17 abolishes 'untouchability' and forbids its practice in any form. The enforcement of any disability arising out of untouchability shall be an offence punishable in accordance with law.

In 1976, the Untouchability (Offences) Act, 1955 has been comprehensively amended and renamed as the Protection of Civil Rights Act, 1955 to enlarge the scope and make penal provisions more stringent. The act defines civil right as any right accruing to a person by reason of the abolition of untouchability by Article 17 of the Constitution.

The term 'untouchability' has not been defined either in the Constitution or in the Act. However, the Mysore High Court held that the subject matter of Article 17 is not untouchability in its literal or grammatical sense but the 'practice as it had developed historically in the country'. It refers to the social disabilities imposed on certain classes of persons by reason of their birth in certain castes. Hence, it does not cover social boycott of a few individuals or their exclusion from religious services, etc.

In the People's Union for Democratic Rights case[9a] (1982), the Supreme Court held that the right under Article 17 is available against private individuals and it is the constitutional obligation of the State to take necessary action to ensure that this right is not violated.

[9]The Tamil Nadu Backward Classes, Scheduled Castes and Scheduled Tribes (Reservation of seats in educational institutions and of appointments or posts in the services under the state) Act, 1993.

[9a]*People's Union for Democratic Rights* vs. *Union of India* (1982).

5. Abolition of Titles

Article 18 abolishes titles and makes four provisions in that regard:

(a) It prohibits the state from conferring any title (except a military or academic distinction) on any body, whether a citizen or a foreigner.

(b) It prohibits a citizen of India from accepting any title from any foreign state.

(c) A foreigner holding any office of profit or trust under the state cannot accept any title from any foreign state without the consent of the president.

(d) No citizen or foreigner holding any office of profit or trust under the State is to accept any present, emolument or office from or under any foreign State without the consent of the president.

From the above, it is clear that the hereditary titles of nobility like Maharaja, Raj Bahadur, Rai Bahadur, Rai Saheb, Dewan Bahadur, etc, which were conferred by colonial States are banned by Article 18 as these are against the principle of equal status of all.

In the Balaji Raghavan case[10] (1995), the Supreme Court upheld the constitutional validity of the National Awards—Bharat Ratna, Padma Vibhushan, Padma Bhushan and Padma Sri. It ruled that these awards do not amount to 'titles' within the meaning of Article 18 that prohibits only hereditary titles of nobility. Therefore, they are not violative of Article 18 as the theory of equality does not mandate that merit should not be recognised. However, it also ruled that they should not be used as suffixes or prefixes to the names of awardees. Otherwise, they should forfeit the awards.

These National Awards were instituted in 1954. The Janata Party government headed by Morarji Desai discontinued them in 1977. But they were again revived in 1980 by the Indira Gandhi government.

The Padma Awards are announced every year on the occassion of Republic Day except for brief interruptions during the years 1978 and 1979 and 1993 to 1997.

The total number of Padma Awards to be given in a year (excluding Posthumous awards and awards given to NRIs/Foreigners/OCIs) should not be more than 120. Similarly, the number of Bharat Ratna Awards is restricted to a maximum of three in a particular year.

RIGHT TO FREEDOM

1. Protection of Six Rights

Article 19 guarantees to all citizens the six rights. These are:

(i) Right to freedom of speech and expression.

(ii) Right to assemble peaceably and without arms.

(iii) Right to form associations or unions or co-operative societies.[10a]

(iv) Right to move freely throughout the territory of India.

(v) Right to reside and settle in any part of the territory of India.

(vi) Right to practice any profession or to carry on any occupation, trade or business.

Originally, Article 19 contained seven rights. But, the right to acquire, hold and dispose of property was deleted by the 44th Amendment Act of 1978.

These six rights are protected against only state action and not private individuals. Moreover, these rights are available only to the citizens and to shareholders of a company but not to foreigners or legal persons like companies or corporations, etc.

The State can impose 'reasonable' restrictions on the enjoyment of these six rights only on the grounds mentioned in the Article 19 itself and not on any other grounds.

The six rights contained in Article 19 and the grounds of imposing reasonable restrictions on them are mentioned in Table 8.5.

Freedom of Speech and Expression It implies that every citizen has the right to express his/her views, opinions, belief and convictions freely by word of mouth, writing, printing, picturing or in any other manner. The Supreme

[10] *Balaji Raghavan* vs. *Union of India* (1995).

[10a] The provision for "co-operative societies" was made by the 97th Constitutional Amendment Act of 2011.

Table 8.5 Rights under Article 19 and the Grounds of Restrictions

Sl. No.	Rights	Grounds of Restrictions
1.	Right to freedom of speech and expression - Article 19(1)(a)	Under Article 19(2) (i) sovereignty and interegrity of India (added by the 16th Amendment Act, 1963) (ii) security of the State (iii) friendly relations with foreign states (added by the 1st Amendment Act, 1951) (iv) public order (added by the 1st Amendment Act, 1951) (v) decency or morality (vi) contempt of court (vii) defamation (viii) incitement to an offence (added by the 1st Amendment Act, 1951)
2.	Right to assemble peaceably and without arms - Article 19(1)(b)	Under Article 19(3) (i) sovereignty and integrity of India (added by the 16th Amendment Act, 1963) (ii) public order
3.	Right to form associations or unions or co-operative societies - Article 19(1)(c)	Under Article 19(4) (i) sovereignty and integriy of India (added by the 16th Amendment Act, 1963) (ii) public order (iii) morality
4.	Right to move freely throughout the territory of India - Article 19(1)(d)	Under Article 19(5) (i) in the interests of the general public (ii) protection of the interests of any scheduled tribe
5.	Right to reside and settle in any part of the territory of India - Article 19(1)(e)	Under Article 19(5) (i) in the interests of the general public (ii) protection of the interests of any scheduled tribe
6.	Right to acquire, hold and dispose of property - Article 19(1)(f) (Omitted by the 44th Amendment Act, 1978)	–
7.	Right to practise any profession, or to carry on any occupation, trade or business - Article 19(1)(g)	Under Article 19(6) (i) in the interests of the general public (ii) requirement of necessary professional or technical qualification (iii) Any trade, business industry or service carried on by the State to the exclusion of citizens (added by the 1st Amendment Act, 1951)

Court held that the freedom of speech and expression includes the following:

(a) Right to propagate one's views (Freedom of circulation).
(b) Freedom of the press.
(c) Freedom of commercial advertisements.
(d) Right against tapping of telephonic conversation.
(e) Right to telecast, that is, government has no monopoly on electronic media.
(f) Right against bundh called by a political party or organisation.
(g) Right to know about government activities.
(h) Freedom of silence.
(i) Right against imposition of pre-censorship on a newspaper.
(j) Right to demonstration or picketing but not right to strike.
(k) Right to fly the national flag
(l) Right of voters to know the antecedents of the candidates contesting elections
(m) Right to choose the medium of instruction at the stage of primary school
(n) Right to express gender identity

(o) Right to reply (Right to answer the criticism)
(p) Right to post information/videos on the internet/social media
(q) Right of film-makers to exhibit their films
(r) Right to access to the internet (Right to access to information via the internet)

The State can impose reasonable restrictions on the exercise of the freedom of speech and expression on the grounds of sovereignty and integrity of India, security of the state, friendly relations with foreign states, public order, decency or morality, contempt of court, defamation, and incitement to an offence.

Freedom of Assembly Every citizen has the right to assemble peaceably and without arms. It includes the right to hold public meetings, demonstrations and take out processions. This freedom can be exercised only on public land and the assembly must be peaceful and unarmed. This provision does not protect violent, disorderly, riotous assemblies, or one that causes breach of public peace or one that involves arms. This right does not include the right to strike.

The State can impose reasonable restrictions on the exercise of right of assembly on two grounds, namely, sovereignty and integrity of India and public order including the maintenance of traffic in the area concerned.

Under Section 144 of Criminal Procedure Code (1973), a magistrate can restrain an assembly, meeting or procession if there is a risk of obstruction, annoyance or danger to human life, health or safety or a disturbance of the public tranquillity or a riot or any affray.

Under Section 141 of the Indian Penal Code, as assembly of five or more persons becomes unlawful if the object is (a) to resist the execution of any law or legal process; (b) to forcibly occupy the property of some person; (c) to commit any mischief or criminal trespass; (d) to force some person to do an illegal act; and (e) to threaten the government or its officials on exercising lawful powers.

Freedom of Association All citizens have the right to form associations or unions or co-operative societies[10b]. It includes the right to form political parties, companies, partnership firms, societies, clubs, organisations, trade unions or any body of persons. It not only includes the right to start an association or union but also to continue with the association or union as such. Further, it covers the negative right of not to form or join an association or union.

Reasonable restrictions can be imposed on the exercise of this right by the State on the grounds of sovereignty and integrity of India, public order and morality. Subject to these restrictions, the citizens have complete liberty to form associations or unions for pursuing lawful objectives and purposes. However, the right to obtain recognition of the association is not a fundamental right.

The Supreme Court held that the trade unions have no guaranteed right to effective bargaining or right to strike or right to declare a lock-out. The right to strike can be controlled by an appropriate industrial law.

Freedom of Movement This freedom entitles every citizen to move freely throughout the territory of the country. He/she can move freely from one state to another or from one place to another within a state. This right underline the idea that India is one unit so far as the citizens are concerned. Thus, the purpose is to promote national feeling and not parochialism.

The grounds of imposing reasonable restrictions on this freedom are two, namely, the interests of general public and the protection of interests of any scheduled tribe. The entry of outsiders in tribal areas is restricted to protect the distinctive culture, language, customs and manners of scheduled tribes and to safeguard their traditional vocation and properties against exploitation.

The Supreme Court held that the freedom of movement of prostitutes can be restricted on the ground of public health and in the interest of public morals. The Bombay High Court validated the restrictions on the movement of persons affected by AIDS.

[10b] *Ibid.*

The freedom of movement has two dimensions, viz, internal (right to move inside the country) and external (right to move out of the country and right to come back to the country). Article 19 protects only the first dimension. The second dimension is dealt by Article 21 (right to life and personal liberty).

Freedom of Residence Every citizen has the right to reside and settle in any part of the territory of the country. This right has two parts: (a) the right to reside in any part of the country, which means to stay at any place temporarily, and (b) the right to settle in any part of the country, which means to set up a home or domicile at any place permanently.

This right is intended to remove internal barriers within the country or between any of its parts. This promotes nationalism and avoids narrow mindedness.

The State can impose reasonable restrictions on the exercise of this right on two grounds, namely, the interest of general public and the protection of interests of any scheduled tribes. The right of outsiders to reside and settle in tribal areas is restricted to protect the distinctive culture, language, customs and manners of scheduled tribes and to safeguard their traditional vocation and properties against exploitation. In many parts of the country, the tribals have been permitted to regulate their property rights in accordance with their customary rules and laws.

The Supreme Court held that certain areas can be banned for certain kinds of persons like prostitutes and habitual offenders.

From the above, it is clear that the right to residence and the right to movement are overlapping to some extent. Both are complementary to each other.

Freedom of Profession, etc. All citizens are given the right to practise any profession or to carry on any occupation, trade or business. This right is very wide as it covers all the means of earning one's livelihood.

The State can impose reasonable restrictions on the exercise of this right in the interest of the general public. Further, the State is empowered to:

(a) prescribe professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business; and

(b) carry on by itself any trade, business, industry or service whether to the exclusion (complete or partial) of citizens or otherwise.

Thus, no objection can be made when the State carries on a trade, business, industry or service either as a monopoly (complete or partial) to the exclusion of citizens (all or some only) or in competition with any citizen. The State is not required to justify its monopoly.

This right does not include the right to carry on a profession or business or trade or occupation that is immoral (trafficking in women or children) or dangerous (harmful drugs or explosives, etc,). The State can absolutely prohibit these or regulate them through licencing.

In *Anuradha Bhasin* case[10c] (2020), the Supreme court held that the freedom to practice any profession or carry on any trade, business or occupation over the medium of internet enjoys constitutional protection under Article 19(1)(g). The restriction on this right should be in consonance with the mandate under Article 19(6), inclusive of the test of proportionality. Further, an order suspending internet services indefinitely is impermissible under the Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules, 2017.

2. Protection in Respect of Conviction for Offences

Article 20 grants protection against arbitrary and excessive punishment to an accused person, whether citizen or foreigner or legal person like a company or a corporation. It contains three provisions in that direction:

(a) No *ex-post-facto* law: No person shall be (i) convicted of any offence except for violation of a law in force at the

[10c] *Anuradha Bhasin* vs. *Union of India* (2020).

time of the commission of the act, nor (ii) subjected to a penalty greater than that prescribed by the law in force at the time of the commission of the act.

(b) No double jeopardy: No person shall be prosecuted and punished for the same offence more than once.

(c) No self-incrimination: No person accused of any offence shall be compelled to be a witness against himself/herself.

An *ex-post-facto* law is one that imposes penalties retrospectively (retroactively), that is, upon acts already done or which increases the penalties for such acts. The enactment of such a law is prohibited by the first provision of Article 20. However, this limitation is imposed only on criminal laws and not on civil laws or tax laws. In other words, a civil liability or a tax can be imposed retrospectively. Further, this provision prohibits only conviction or sentence under an *ex-post-facto* criminal law and not the trial thereof. Finally, the protection (immunity) under this provision cannot be claimed in case of preventive detention or demanding security from a person.

The protection against double jeopardy is available only in proceedings before a court of law or a judicial tribunal. In other words, it is not available in proceedings before departmental or administrative authorities as they are not of judicial nature.

The protection against self-incrimination extends to both oral evidence and documentary evidence. However, it does not extend to (i) compulsory production of material objects, (ii) compulsion to give thumb impression, specimen signature, blood specimens, and (iii) compulsory exhibition of the body. Further, it extends only to criminal proceedings and not to civil proceedings or proceedings which are not of criminal nature.

3. Protection of Life and Personal Liberty

Article 21 declares that no person shall be deprived of his/her life or personal liberty except according to procedure established by law. This right is available to both citizens and non-citizens.

In the famous *Gopalan* case[11] (1950), the Supreme Court has taken a narrow interpretation of the Article 21. It held that the protection under Article 21 is available only against arbitrary executive action and not from arbitrary legislative action. This means that the State can deprive the right to life and personal liberty of a person based on a law. This is because of the expression 'procedure established by law' in Article 21, which is different from the expression 'due process of law' contained in the American Constitution. Hence, the validity of a law that has prescribed a procedure cannot be questioned on the ground that the law is unreasonable, unfair or unjust. Secondly, the Supreme Court held that the 'personal liberty' means only liberty relating to the person or body of the individual. But, in *Maneka* case[12] (1978), the Supreme Court overruled its judgement in the *Gopalan* case by taking a wider interpretation of the Article 21. Therefore, it ruled that the right to life and personal liberty of a person can be deprived by a law provided the procedure prescribed by that law is reasonable, fair and just and not arbitrary, fanciful or oppressive. In order that the procedure is reasonable, fair and just, the procedure should conform to the principles of "natural justice". In other words, it has introduced the American expression 'due process of law'. In effect, the protection under Article 21 should be available not only against arbitrary executive action but also against arbitrary legislative action. Further, the court held that the 'right to life' as embodied in Article 21 is not merely confined to animal existence or survival but it includes within its ambit the right to live with human dignity and all those aspects of life which go to make a man's life meaningful, complete and worth living. It also ruled that the expression 'Personal Liberty' in Article 21 is of the widest amplitude and it covers a variety of rights that go to constitute the personal liberties of a man.

[11] *A K Gopalan* vs. *State of Madras* (1950).
[12] *Maneka Gandhi* vs. *Union of India* (1978).

The Supreme Court has reaffirmed its judgement in the *Maneka* case in the subsequent cases. It has declared the following rights as part of Article 21:

(1) Right to live with human dignity.
(2) Right to decent environment including pollution free water and air and protection against hazardous industries.
(3) Right to livelihood.
(4) Right to privacy.
(5) Right to shelter.
(6) Right to health.
(7) Right to free education up to 14 years of age.
(8) Right to free legal aid.
(9) Right against solitary confinement.
(10) Right to speedy trial.
(11) Right against handcuffing.
(12) Right against inhuman treatment.
(13) Right against delayed execution.
(14) Right to travel abroad.
(15) Right against bonded labour.
(16) Right against custodial harassment.
(17) Right to emergency medical aid (Right to Doctor's assistance).
(18) Right to timely medical treatment in government hospital.
(19) Right not to be driven out of a state.
(20) Right to fair trial.
(21) Right of prisoner to have necessities of life.
(22) Right of women to be treated with decency and dignity.
(23) Right against public hanging.
(24) Right to road in hilly areas.
(25) Right to information.
(26) Right to reputation.
(27) Right of appeal from a judgement of conviction
(28) Right to family pension
(29) Right to social and economic justice and empowerment
(30) Right against bar fetters
(31) Right to appropriate life insurance policy
(32) Right to sleep
(33) Right to freedom from noise pollution
(34) Right to sustainable development
(35) Right to opportunity.
(36) Right to decent burial/cremation
(37) Right to marry a person of one's choice
(38) Right to die with dignity (passive euthanasia)

The important cases relating to the expansion of the scope of Article 21 (Protection of Life and Personal Liberty) are mentioned in Table 8.6.

4. Right to Education

Article 21A declares that the State shall provide free and compulsory education to all children of the age of six to fourteen years in such a manner as the State may determine. Thus, this provision makes only elementary education a Fundamental Right and not higher or professional education.

This provision was added by the 86th Constitutional Amendment Act of 2002. This amendment is a major milestone in the country's aim to achieve 'Education for All'. The government described this step as 'the dawn of the second revolution in the chapter of citizens' rights'.

Even before this amendment, the Constitution contained a provision for free and compulsory education for children under Article 45 in Part IV. However, being a directive principle, it was not enforceable by the courts. Now, there is scope for judicial intervention in this regard.

This amendment changed the subject matter of Article 45 in directive principles. It now reads—'The state shall endeavour to provide early childhood care and education for all children until they complete the age of six years.' It also added a new fundamental duty under Article 51A that reads—'It shall be the duty of every citizen of India to provide opportunities for education to his child or ward between the age of six and fourteen years'.

In *Unni Krishnan* case[12a] (1993) itself, the Supreme Court recognised a Fundamental Right to primary education in the right to life under Article 21. It held that every child has a right to free education until he/she

[12a] *Unni Krishnan* vs. *State of Andhra Pradesh* (1993).

Table 8.6 Important cases expanding the scope of Article 21 (Protection of life and personal liberty)

Sl. No.	Case (Year)	Right declared by the Supreme Court as an integral part of Article 21
1.	Satwant Singh Sawhney vs. Dr. Ramaratnam, Assistant Passport Officer (1967)	Right to travel abroad
2.	M.H. Hoskot vs. State of Maharashtra (1978)	Right to free legal aid
3.	Hussainara Khatoon vs. Home Secretary, Bihar (1979)	Right to speedy trial
4.	Francis Coralie Mullin vs. Administrator, Delhi (1981)	Right to live with human dignity & Right of prisoner to have necessities of life
5.	Sheela Barse vs. State of Maharashtra (1983)	Right against custodial harassment
6.	Rural Litigation and Entitlement Kendra vs. State of Uttar Pradesh (1985)	Right to decent environment
7.	Olga Tellis vs. Bombay Municipal Corporation (1985)	Right to livelihood
8.	Parmanand Katara vs. Union of India (1989)	Right to emergency medical aid (Right to Doctor's assistance)
9.	Shantistar Builders vs. N.K. Totame (1990)	Right to shelter
10.	K.S. Puttaswamy vs. Union of India (2017)	Right to privacy
11.	Common Cause (A Regd. Society) vs. Union of India (2018)	Right to die with dignity (Passive euthanasia)

completes the age of 14 years. Thereafter, his/her right to education is subject to the limits of economic capacity and development of the state. In this judgement, the Court overruled its earlier judgement delivered in *Mohini Jain* case[12b] (1992) wherein it partly declared that there was a fundamental right to education up to any level including professional education like medicine and engineering.

In pursuance of Article 21A, the Parliament enacted the Right of Children to Free and Compulsory Education (RTE) Act, 2009. This Act seeks to provide that every child has a right to be provided full time elementary education of satisfactory and equitable quality in a formal school which satisfies certain essential norms and standards. This legislation is anchored in the belief that the values of equality, social justice and democracy and the creation of a just and humane society can be achieved only through provision of inclusive elementary education to all.

The Constitution (Eighty-sixth amendment) Act, 2002 and the Right of Children to Free and Compulsory Education Act, 2009 have come into force w.e.f. 1 April 2010.

5. Protection Against Arrest and Detention

Article 22 grants protection to persons who are arrested or detained. Detention is of two types, namely, punitive and preventive. **Punitive detention** is to punish a person for an offence committed by him/her after trial and conviction in a court. **Preventive detention**, on the other hand, means detention of a person without trial and conviction by a court. Its purpose is not to punish a person for a past offence but to prevent him/her from committing an offence in the near future. Thus, preventive detention is only a precautionary measure and based on suspicion.

[12b] *Mohini Jain* vs. *State of Karnataka* (1992).

The Article 22 has two parts—the first part deals with the cases of ordinary law and the second part deals with the cases of preventive detention law.

(a) The first part of Article 22 confers the following rights on a person who is arrested or detained under an ordinary law:
  (i) Right to be informed of the grounds of arrest.
  (ii) Right to consult and be defended by a legal practitioner.
  (iii) Right to be produced before a magistrate within 24 hours, excluding the journey time.
  (iv) Right to be released after 24 hours unless the magistrate authorises further detention.

  These safeguards are not available to an enemy alien or a person arrested or detained under a preventive detention law.

  The Supreme Court also ruled that the arrest and detention in the first part of Article 22 do not cover arrest under the orders of a court, civil arrest, arrest on failure to pay the income tax, and deportation of an alien. They apply only to an act of a criminal or quasi-criminal nature or some activity prejudicial to public interest.

(b) The second part of Article 22 grants protection to persons who are arrested or detained under a preventive detention law. This protection is available to both citizens as well as aliens and includes the following:
  (i) The detention of a person cannot exceed three months unless an advisory board reports sufficient cause for extended detention. The board is to consist of judges of a high court.
  (ii) The grounds of detention should be communicated to the detenu. However, the facts considered to be against the public interest need not be disclosed.
  (iii) The detenu should be afforded an opportunity to make a representation against the detention order.

Article 22 also authorises the Parliament to prescribe **(a)** the circumstances and the classes of cases in which a person can be detained for more than three months under a preventive detention law without obtaining the opinion of an advisory board; **(b)** the maximum period for which a person can be detained in any classes of cases under a preventive detention law; and **(c)** the procedure to be followed by an advisory board in an enquiry.

The 44th Amendment Act of 1978 has reduced the period of detention without obtaining the opinion of an advisory board from three to two months. However, this provision has not yet been brought into force, hence, the original period of three months still continues.

The Constitution has divided the legislative power with regard to preventive detention between the Parliament and the state legislatures. The Parliament has exclusive authority to make a law of preventive detention for reasons connected with defence, foreign affairs and the security of India. Both the Parliament as well as the state legislatures can concurrently make a law of preventive detention for reasons connected with the security of a state, the maintenance of public order and the maintenance of supplies and services essential to the community.

The preventive detention laws made by the Parliament are:

(a) Preventive Detention Act, 1950. Expired in 1969.
(b) Maintenance of Internal Security Act (MISA), 1971. Repealed in 1978.
(c) Conservation of Foreign Exchange and Prevention of Smuggling Activities Act (COFEPOSA), 1974.
(d) National Security Act (NASA), 1980.
(e) Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act (PBMSECA), 1980.
(f) Terrorist and Disruptive Activities (Prevention) Act (TADA), 1985. Repealed in 1995.
(g) Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act (PITNDPSA), 1988.

(h) Prevention of Terrorism Act (POTA), 2002. Repealed in 2004.

(i) Unlawful Activities (Prevention) Act (UAPA), 1967, as amended in 2004, 2008, 2012 and 2019.

It is unfortunate to know that no democratic country in the world has made preventive detention as an integral part of the Constitution as has been done in India. It is unknown in USA. It was resorted to in Britain only during first and second world war time. In India, preventive detention existed even during the British rule. For example, the Bengal State Prisoners Regulation of 1818 and the Defence of India Act of 1939 provided for preventive detention.

RIGHT AGAINST EXPLOITATION

1. Prohibition of Traffic in Human Beings and Forced Labour

Article 23 prohibits traffic in human beings, *begar* (forced labour) and other similar forms of forced labour. Any contravention of this provision shall be an offence punishable in accordance with law. This right is available to both citizens and non-citizens. It protects the individual not only against the State but also against private persons.

The expression 'traffic in human beings' include (a) selling and buying of men, women and children like goods; (b) immoral traffic in women and children, including prostitution; (c) *devadasis*; and (d) slavery. To punish these acts, the Parliament has implemented the Immoral Traffic (Prevention) Act[13], 1956.

The term *'begar'* means compulsory work without remuneration. It was a peculiar Indian system under which the local zamindars sometimes used to force their tenants to render services without any payment. In addition to *begar*, the Article 23 prohibits other 'similar forms of forced labour' like 'bonded labour'. The term 'forced labour' means compelling a person to work against his/her will. The word 'force' includes not only physical or legal force but also force arising from the compulsion of economic circumstances, that is, working for less than the minimum wage. In this regard, the Bonded Labour System (Abolition) Act, 1976; the Minimum Wages Act, 1948; the Contract Labour Act, 1970 and the Equal Remuneration Act, 1976 were made.

Article 23 also provides for an exception to this provision. It permits the State to impose compulsory service for public purposes, as for example, military service or social service, for which it is not bound to pay. However, in imposing such service, the State is not permitted to make any discrimination on grounds only of religion, race, caste or class.

2. Prohibition of Employment of Children in Factories, etc.

Article 24 prohibits the employment of children below the age of 14 years in any factory, mine or other hazardous activities like construction work or railway. But it does not prohibit their employment in any harmless or innocent work.

The Child Labour (Prohibition and Regulation) Act, 1986, is the most important law in this direction. In addition, the Employment of Children Act, 1938; the Factories Act, 1948; the Mines Act, 1952; the Merchant Shipping Act, 1958; the Plantation Labour Act, 1951; the Motor Transport Workers Act, 1951; Apprentices Act, 1961; the Bidi and Cigar Workers Act, 1966; and other similar acts prohibit the employment of children below certain age.

In 1996, the Supreme Court directed the establishment of Child Labour Rehabilitation Welfare Fund in which the offending employer should deposit a fine of ₹20,000 for each child employed by him/her. It also issued directions for the improvement of education, health and nutrition of children.

The Commissions for Protection of Child Rights Act, 2005 was enacted to provide for the establishment of a National Commission and State Commissions for Protection of Child

[13]Originally known as the Suppression of Immoral Traffic in Women and Girls Act, 1956.

Rights and Children's Courts for providing speedy trial of offences against children or of violation of child rights.

In 2006, the government banned the employment of children as domestic servants or workers in business establishments like hotels, dhabas, restaurants, shops, factories, resorts, spas, tea-shops and so on. It warned that anyone employing children below 14 years of age would be liable for prosecution and penal action.

The Child Labour (Prohibition and Regulation) Amendment Act, 2016, amended the Child Labour (Prohibition and Regulation) Act, 1986. It has renamed the Principal Act as the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986.

RIGHT TO FREEDOM OF RELIGION

1. Freedom of Conscience and Free Profession, Practice and Propagation of Religion

Article 25 says that all persons are equally entitled to freedom of conscience and the right to freely profess, practice and propagate religion. The implications of these are:

(a) *Freedom of conscience:* Inner freedom of an individual to mould his/her relation with God or Creatures in whatever way he/she desires.

(b) *Right to profess:* Declaration of one's religious beliefs and faith openly and freely.

(c) *Right to practice:* Performance of religious worship, rituals, ceremonies and exhibition of beliefs and ideas.

(d) *Right to propagate:* Transmission and dissemination of one's religious beliefs to others or exposition of the tenets of one's religion. But, it does not include a right to convert another person to one's own religion. Forcible conversions impinge on the 'freedom of conscience' guaranteed to all the persons alike.

From the above, it is clear that Article 25 covers not only religious beliefs (doctrines) but also religious practices (rituals). Moreover, these rights are available to all persons—citizens as well as non-citizens.

However, these rights are subject to public order, morality, health and other provisions relating to fundamental rights. Further, the State is permitted to:

(a) regulate or restrict any economic, financial, political or other secular activity associated with religious practice; and

(b) provide for social welfare and reform or throw open Hindu religious institutions of a public character to all classes and sections of Hindus.

Article 25 also contains two explanations: one, wearing and carrying of *kirpans* is to be included in the profession of the Sikh religion; and two, the Hindus, in this context, include Sikhs, Jains and Buddhists.[14]

2. Freedom to Manage Religious Affairs

According to Article 26, every religious denomination or any of its section shall have the following rights:

(a) Right to establish and maintain institutions for religious and charitable purposes;

(b) Right to manage its own affairs in matters of religion;

(c) Right to own and acquire movable and immovable property; and

(d) Right to administer such property in accordance with law.

Article 25 guarantees rights of individuals, while Article 26 guarantees rights of religious denominations or their sections. In other words, Article 26 protects collective freedom of religion. Like the rights under Article 25, the rights under Article 26 are also subject to public order, morality and health but not subject to other provisions relating to the Fundamental Rights.

[14] In this clause, the reference to Hindus shallbe construed as including a reference to persons professing the Sikh, Jaina and Buddhist religion and the reference to Hindu religious institutions shall be construed accordingly (Article 25).

The Supreme Court held that a religious denomination must satisfy three conditions:

(a) It should be a collection of individuals who have a system of beliefs (doctrines) which they regard as conducive to their spiritual well-being;

(b) It should have a common organisation; and

(c) It should be designated by a distinctive name.

Under the above criteria, the Supreme Court held that the 'Ramakrishna Mission' and 'Ananda Marga' are religious denominations within the Hindu religion. It also held that Aurobindo Society is not a religious denomination.

3. Freedom from Taxation for Promotion of a Religion

Article 27 lays down that no person shall be compelled to pay any taxes for the promotion or maintenance of any particular religion or religious denomination. In other words, the State should not spend the public money collected by way of tax for the promotion or maintenance of any particular religion. This provision prohibits the State from favouring, patronising and supporting one religion over the other. This means that the taxes can be used for the promotion or maintenance of all religions.

This provision prohibits only levy of a tax and not a fee. This is because the purpose of a fee is to control secular administration of religious institutions and not to promote or maintain religion. Thus, a fee can be levied on pilgrims to provide them some special service or safety measures. Similarly, a fee can be levied on religious endowments for meeting the regulation expenditure.

4. Freedom from Attending Religious Instruction

Under Article 28, no religious instruction shall be provided in any educational institution wholly maintained out of State funds. However, this provision shall not apply to an educational institution administered by the State but established under any endowment or trust, requiring imparting of religious instruction in such institution.

Further, no person attending any educational institution recognised by the State or receiving aid out of State funds shall be required to attend any religious instruction or worship in that institution without his/her consent. In case of a minor, the consent of his/her guardian is needed.

Thus, Article 28 distinguishes between four types of educational institutions:

(a) Institutions wholly maintained by the State.

(b) Institutions administered by the State but established under any endowment or trust.

(c) Institutions recognised by the State.

(d) Institutions receiving aid from the State.

In (a), religious instruction is completely prohibited while in (b), religious instruction is permitted. In (c) and (d), religious instruction is permitted on a voluntary basis.

CULTURAL AND EDUCATIONAL RIGHTS

1. Protection of Interests of Minorities

Article 29 provides that any section of the citizens residing in any part of India having a distinct language, script or culture of its own, shall have the right to conserve the same. Further, no citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, or language.

The first provision protects the right of a group while the second provision guarantees the right of a citizen as an individual irrespective of the community to which he/she belongs.

Article 29 grants protection to both religious minorities as well as linguistic minorities. However, the Supreme Court held that the scope of this article is not necessarily restricted to minorities only, as it is commonly assumed to be. This is because of the use of words 'section of citizens' in the Article that include minorities as well as majority.

The Supreme Court also held that the right to conserve the language includes the right to agitate for the protection of the language. Hence, the political speeches or promises made for the conservation of the language of a section of the citizens does not amount to corrupt practice under the Representation of the People Act, 1951.

2. Right of Minorities to Establish and Administer Educational Institutions

Article 30 grants the following rights to minorities, whether religious or linguistic:

(a) All minorities shall have the right to establish and administer educational institutions of their choice.

(b) The compensation amount fixed by the State for the compulsory acquisition of any property of a minority educational institution shall not restrict or abrogate the right guaranteed to them. This provision was added by the 44th Amendment Act of 1978 to protect the right of minorities in this regard. The Act deleted the right to property as a Fundamental Right (Article 31).

(c) In granting aid, the State shall not discriminate against any educational institution managed by a minority.

Thus, the protection under Article 30 is confined only to minorities (religious or linguistic) and does not extend to any section of citizens (as under Article 29). However, the term 'minority' has not been defined anywhere in the Constitution.

The right under Article 30 also includes the right of a minority to impart education to its children in its own language.

Minority educational institutions are of three types:

(a) institutions that seek recognition as well as aid from the State;

(b) institutions that seek only recognition from the State and not aid; and

(c) institutions that neither seek recognition nor aid from the State.

The institutions of first and second type are subject to the regulatory power of the state with regard to syllabus prescription, academic standards, discipline, sanitation, employment of teaching staff and so on. The institutions of third type are free to administer their affairs but subject to operation of general laws like contract law, labour law, industrial law, tax law, economic regulations, and so on.

In a judgement delivered in the *Secretary of Malankara Syrian Catholic College* case[14a] (2006), the Supreme Court has summarized the general principles relating to establishment and administration of minority educational institutions in the following way:

1. The right of minorities to establish and administer educational institutions of their choice comprises the following rights:
   (i) To choose its governing body in whom the founders of the institution have faith and confidence to conduct and manage the affairs of the institution;
   (ii) To appoint teaching staff (teachers/lecturers and head-masters/principals) as also non-teaching staff; and to take action if there is dereliction of duty on the part of any of its employees;
   (iii) To admit eligible students of their choice and to set up a reasonable fee structure; and
   (iv) To use its properties and assets for the benefit of the institution.
2. The right conferred on minorities under Article 30 is only to ensure equality with the majority and not intended to place the minorities in a more advantageous position vis-à-vis the majority. There is no reverse discrimination in favour of minorities. The general laws of the land relating to national interest, national security, social welfare, public order, morality, health, sanitation, taxation etc., applicable to all, will equally apply to minority institutions also.
3. The right to establish and administer educational institutions is not absolute.

[14a] *Secretary of the Malankara Syrian Catholic College* vs. *T. Jose* (2006).

Nor does it include the right to maladminister. There can be regulatory measures for ensuring educational character and standards and maintaining academic excellence. There can be checks on administration as are necessary to ensure that the administration is efficient and sound, so as to serve the academic needs of the institution. Regulations made by the State concerning generally the welfare of students and teachers, regulations laying down eligibility criteria and qualifications for appointment, as also conditions of service of employees (both teaching and non-teaching), regulations to prevent exploitation or oppression of employees, and regulations prescribing syllabus and curriculum of study fall under this category. Such regulations do not in any manner interfere with the right under Article 30(1).

4. Subject to the eligibility conditions/qualifications prescribed by the State being met, the unaided minority educational institutions will have the freedom to appoint teachers/lecturers by adopting any rational procedure of selection.
5. Extention of aid by the State, does not alter the nature and character of the minority educational institutions. The conditions can be imposed by the State to ensure proper utilization of the aid, without however diluting or abridging the right under Article 30(1).

RIGHT TO CONSTITUTIONAL REMEDIES

A mere declaration of fundamental rights in the Constitution is meaningless, useless and worthless without providing an effective machinery for their enforcement, if and when they are violated. Hence, Article 32 confers the right to remedies for the enforcement of the fundamental rights of an aggrieved citizen. In other words, the right to get the Fundamental Rights protected is in itself a fundamental right. This makes the fundamental rights real. That is why Dr. Ambedkar called Article 32 as the most important article of the Constitution—'an Article without which this constitution would be a nullity. It is the very soul of the Constitution and the very heart of it'. The Supreme Court has ruled that Article 32 is a basic feature of the Constitution. Hence, it cannot be abridged or taken away even by way of an amendment to the Constitution. It contains the following four provisions:

(a) The right to move the Supreme Court by appropriate proceedings for the enforcement of the Fundamental Rights is guaranteed.
(b) The Supreme Court shall have power to issue directions or orders or writs for the enforcement of any of the fundamental rights. The writs issued may include *habeas corpus, mandamus,* prohibition, *certiorari* and *quo-warranto.*
(c) Parliament can empower any other court to issue directions, orders and writs of all kinds. However, this can be done without prejudice to the above powers conferred on the Supreme Court. Any other court here does not include high courts because Article 226 has already conferred these powers on the high courts.
(d) The right to move the Supreme Court shall not be suspended except as otherwise provided for by the Constitution. Thus the Constitution provides that the President can suspend the right to move any court for the enforcement of the fundamental rights during a national emergency (Article 359).

It is thus clear that the Supreme Court has been constituted as the defender and guarantor of the fundamental rights of the citizens. It has been vested with the 'original' and 'wide' powers for that purpose. Original, because an aggrieved citizen can directly go to the Supreme Court, not necessarily by way of appeal. Wide, because its power is not restricted to issuing of orders or directions but also writs of all kinds.

The purpose of Article 32 is to provide a guaranteed, effective, expeditious, inexpensive and summary remedy for the protection of the fundamental rights. Only the Fundamental Rights guaranteed by the Constitution can be enforced under Article 32 and not any other right like non-fundamental constitutional rights, statutory rights, customary rights and so on. The violation of a fundamental right is the *sine qua non* for the exercise of the right conferred by Article 32. In other words, the Supreme Court, under Article 32, cannot determine a question that does not involve Fundamental Rights. Article 32 cannot be invoked simply to determine the constitutionality of an executive order or a legislation unless it directly infringes any of the fundamental rights.

In case of the enforcement of Fundamental Rights, the jurisdiction of the Supreme Court is original but not exclusive. It is concurrent with the jurisdiction of the high court under Article 226. It vests original powers in the high court to issue directions, orders and writs of all kinds for the enforcement of the Fundamental Rights. It means when the Fundamental Rights of a citizen are violated, the aggrieved party has the option of moving either the high court or the Supreme Court directly.

Since the right guaranteed by Article 32 (ie, the right to move the Supreme Court where a fundamental right is infringed) is in itself a fundamental right, the availability of alternate remedy is no bar to relief under Article 32. However, the Supreme Court has ruled that where relief through high court is available under Article 226, the aggrieved party should first move the high court.

WRITS—TYPES AND SCOPE

The Supreme Court (under Article 32) and the high courts (under Article 226) can issue the writs of *habeas corpus, mandamus,* prohibition, *certiorari* and *quo-warranto*. Further, the Parliament (under Article 32) can empower any other court to issue these writs. Since no such provision has been made so far, only the Supreme Court and the high courts can issue the writs and not any other court. Before 1950, only the High Courts of Calcutta, Bombay and Madras had the power to issue the writs. Article 226 now empowers all the high courts to issue the writs.

These writs are borrowed from English law where they are known as 'prerogative writs'. They are so called in England as they were issued in the exercise of the prerogative of the King who was, and is still, described as the 'fountain of justice'. Later, the high court started issuing these writs as extraordinary remedies to uphold the rights and liberties of the British people.

The writ jurisdiction of the Supreme Court differs from that of a high court in three respects:

1. The Supreme Court can issue writs only for the enforcement of fundamental rights whereas a high court can issue writs not only for the enforcement of Fundamental Rights but also for any other purpose. The expression 'for any other purpose' refers to the enforcement of an ordinary legal right. Thus, the writ jurisdiction of the Supreme Court, in this respect, is narrower than that of a high court.
2. The Supreme Court can issue writs against a person or government throughout the territory of India whereas a high court can issue writs against a person residing or against a government or authority located within its territorial jurisdiction only or outside its territorial jurisdiction only if the cause of action arises within its territorial jurisdiction.[15] Thus, the territorial jurisdiction of the Supreme Court for the purpose of issuing writs is wider than that of a high court.
3. A remedy under Article 32 is in itself a Fundamental Right and hence, the Supreme Court may not refuse to exercise its writ jurisdiction. On the other

[15]The second provision was added by the 15th Constitutional Amendment Act of 1963.

hand, a remedy under Article 226 is discretionary and hence, a high court may refuse to exercise its writ jurisdiction. Article 32 does not merely confer power on the Supreme Court as Article 226 does on a high court to issue writs for the enforcement of fundamental rights or other rights as part of its general jurisdiction. The Supreme Court is thus constituted as a defender and guarantor of the fundamental rights.

Now, we will proceed to understand the meaning and scope of different kinds of writs mentioned in Articles 32 and 226 of the Constitution:

Habeas Corpus

It is a Latin term which literally means 'to have the body of'. It is an order issued by the court to a person who has detained another person, to produce the body of the latter before it. The court then examines the cause and legality of detention. It would set the detained person free, if the detention is found to be illegal. Thus, this writ is a bulwark of individual liberty against arbitrary detention.

The writ of *habeas corpus* can be issued against both public authorities as well as private individuals. The writ, on the other hand, is not issued where the **(a)** detention is lawful, **(b)** the proceeding is for contempt of a legislature or a court, **(c)** detention is by a competent court, and **(d)** detention is outside the jurisdiction of the court.

Mandamus

It literally means 'we command'. It is a command issued by the court to a public official asking him/her to perform his/her official duties that he/she has failed or refused to perform. It can also be issued against any public body, a corporation, an inferior court, a tribunal or government for the same purpose.

The writ of *mandamus* cannot be issued **(a)** against a private individual or body; **(b)** to enforce departmental instruction that does not possess statutory force; **(c)** when the duty is discretionary and not mandatory; **(d)** to enforce a contractual obligation; **(e)** against the president of India or the state governors; and **(f)** against the chief justice of a high court acting in judicial capacity.

Prohibition

Literally, it means 'to forbid'. It is issued by a higher court to a lower court or tribunal to prevent the latter from exceeding its jurisdiction or usurping a jurisdiction that it does not possess. Thus, unlike *mandamus* that directs activity, the prohibition directs inactivity.

The writ of prohibition can be issued only against judicial and quasi-judicial authorities. It is not available against administrative authorities, legislative bodies, and private individuals or bodies.

Certiorari

In the literal sense, it means 'to be certified' or 'to be informed'. It is issued by a higher court to a lower court or tribunal to quash the order passed by the latter in a case. It is issued on the grounds of excess of jurisdiction or lack of jurisdiction. Thus, like the writ of prohibition, the writ of certiorari is also a jurisdicitonal writ. However, they are issued at different stages of proceedings before a lower court or tribunal. The prohibition is issued before the final order is passed for stopping the further continuance of the proceedings, whereas the certiorari is issued after the final order is passed for quashing the same.

Like prohibition, certiorari can be issued only against the judicial and quasi-judicial authorities. Similarly, the certiorari is also not available against administrative authorities, legislative bodies, and private individuals or bodies.

Quo-Warranto

In the literal sense, it means 'by what authority or warrant'. It is issued by the court to enquire into the legality of claim of a person to a public office. Hence, it prevents illegal usurpation of public office by a person.

This writ can be issued only in case of a substantive public office of a permanent character created by a statute or by the Constitution. It cannot be issued in cases of ministerial office or private office.

This writ can be sought by any public minded person and not necessarily by the aggrieved person.

ARMED FORCES AND FUNDAMENTAL RIGHTS

Article 33 empowers the Parliament to restrict or abrogate the fundamental rights of the members of armed forces, para-military forces, police forces, intelligence agencies and analogous forces. The objective of this provision is to ensure the proper discharge of their duties and the maintenance of discipline among them.

The power to make laws under Article 33 is conferred only on Parliament and not on state legislatures. Any such law made by Parliament cannot be challenged in any court on the ground of contravention of any of the fundamental rights.

Accordingly, the Parliament has enacted the Army Act (1950), the Navy Act (1950), the Air Force Act (1950), the Police Forces (Restriction of Rights) Act, 1966, the Border Security Force Act and so on. These impose restrictions on their freedom of speech, right to form associations, right to be members of trade unions or political associations, right to communicate with the press, right to attend public meetings or demonstrations, etc.

The expression'members of the armed forces' also covers such employees of the armed forces as barbers, carpenters, mechanics, cooks, chowkidars, bootmakers, tailors who are non-combatants.

A parliamentary law enacted under Article 33 can also exclude the court martial (tribunals established under the military law) from the writ jurisdiction of the Supreme Court and the high courts, so far as the enforcement of Fundamental Rights is concerned.

MARTIAL LAW AND FUNDAMENTAL RIGHTS

Article 34 provides for the restrictions on fundamental rights while martial law is in force in any area within the territory of India. It empowers the Parliament to indemnify any government servant or any other person for any act done by him/her in connection with the maintenance or restoration of order in any area where martial law was in force. The Parliament can also validate any sentence passed, punishment inflicted, forfeiture ordered or other act done under martial law in such area.

The Act of Indemnity made by the Parliament cannot be challenged in any court on the ground of contravention of any of the fundamental rights.

The concept of martial law has been borrowed in India from the English common law. However, the expression 'martial law' has not been defined anywhere in the Constitution. Literally, it means 'military rule'. It refers to a situation where civil administration is run by the military authorities according to their own rules and regulations framed outside the ordinary law. It thus implies the suspension of ordinary law and the government by military tribunals. It is different from the military law that is applicable to the armed forces.

There is also no specific or express provision in the Constitution that authorises the executive to declare martial law. However, it is implicit in Article 34 under which martial law can be declared in any area within the territory of India. The martial law is imposed under the extraordinary circumstances like war, invasion, insurrection, rebellion, riot or any violent resistance to law. Its justification is to repel force by force for maintaining or restoring order in the society.

During the operation of martial law, the military authorities are vested with abnormal powers to take all necessary steps. They impose restrictions and regulations on the rights of the civilians, can punish the civilians and even condemn them to death.

Table 8.7 Martial Law vs. National Emergency

Martial Law	National Emergency
1. It affects only Fundamental Rights.	1. It affects not only Fundamental Rights but also Centre–state relations, distribution of revenues and legislative powers between centre and states and may extend the tenure of the Parliament.
2. It suspends the government and ordinary law courts.	2. It continues the government and ordinary law courts.
3. It is imposed to restore the breakdown of law and order due to any reason.	3. It can be imposed only on three grounds—war, external aggression or armed rebellion.
4. It is imposed in some specific area of the country.	4. It is imposed either in the whole country or in any part of it.
5. It has no specific provision in the Constitution. It is implicit.	5. It has specific and detailed provision in the Constitution. It is explicit.

The Supreme Court held that the declaration of martial law does not *ipso facto* result in the suspension of the writ of *habeas corpus*.

The declaration of a martial law under Article 34 is different from the declaration of a national emergency under Article 352. The differences between the two are summarised in Table 8.7.

EFFECTING CERTAIN FUNDAMENTAL RIGHTS

Article 35 lays down that the power to make laws, to give effect to certain specified fundamental rights shall vest only in the Parliament and not in the state legislatures. This provision ensures that there is uniformity throughout India with regard to the nature of those fundamental rights and punishment for their infringement. In this direction, Article 35 contains the following provisions:

1. The Parliament shall have (and the legislature of a state shall not have) power to make laws with respect to the following matters:

(a) Prescribing residence as a condition for certain employments or appointments in a state or union territory or local authority or other authority (Article 16).

(b) Empowering courts other than the Supreme Court and the high courts to issue directions, orders and writs of all kinds for the enforcement of fundamental rights (Article 32).

(c) Restricting or abrogating the application of Fundamental Rights to members of armed forces, police forces, etc. (Article 33).

(d) Indemnifying any government servant or any other person for any act done during the operation of martial law in any area (Article 34).

2. Parliament shall have (and the legislature of a state shall not have) powers to make laws for prescribing punishment for those acts that are declared to be offences under the fundamental rights. These include the following:

(a) Untouchability (Article 17).

(b) Traffic in human beings and forced labour (Article 23).

Further, the Parliament shall, after the commencement of the Constitution, make laws for prescribing punishment for the above acts, thus making it obligatory on the part of the Parliament to enact such laws.

3. Any law in force at the commencement of the Constitution with respect to any of

the matters specified above is to continue in force until altered or repealed or amended by the Parliament.

It should be noted that Article 35 extends the competence of the Parliament to make a law on the matters specified above, even though some of those matters may fall within the sphere of the state legislatures (i.e., State List).

PRESENT POSITION OF RIGHT TO PROPERTY

Originally, the right to property was one of the seven fundamental rights under Part III of the Constitution. It was dealt by Article 19(1)(f) and Article 31. Article 19(1)(f) guaranteed to every citizen the right to acquire, hold and dispose of property. Article 31, on the other hand, guaranteed to every person, whether citizen or non-citizen, right against deprivation of his/her property. It provided that no person shall be deprived of his/her property except by authority of law. It empowered the State to acquire or requisition the property of a person on two conditions: **(a)** it should be for public purpose, and **(b)** it should provide for payment of compensation (amount) to the owner.

Since the commencement of the Constitution, the Fundamental Right to Property has been the most controversial. It has caused confrontations between the Supreme Court and the Parliament. It has led to a number of Constitutional amendments, that is, 1st, 4th, 7th, 25th, 39th, 40th and 42nd Amendments. Through these amendments, Articles 31A, 31B and 31C have been added and modified from time to time to nullify the effect of Supreme Court judgements and to protect certain laws from being challenged on the grounds of contravention of Fundamental Rights. Most of the litigation centred around the obligation of the state to pay compensation for acquisition or requisition of private property.

Therefore, the 44th Amendment Act of 1978 abolished the right to property as a Fundamental Right by repealing Article 19(1)(f) and Article 31 from Part III. Instead, the Act inserted a new Article 300A in Part XII under the heading 'Right to Property'. It provides that no person shall be deprived of his/her property except by authority of law. Thus, the right to property still remains a legal right or a constitutional right, though no longer a fundamental right. It is not a part of the basic structure of the Constitution.

The right to property as a legal right (as distinct from the Fundamental Rights) has the following implications:

(a) It can be regulated ie, curtailed, abridged or modified without constitutional amend-ment by an ordinary law of the Parliament.

(b) It protects private property against executive action but not against legislative action.

(c) In case of violation, the aggrieved person cannot directly move the Supreme Court under Article 32 (right to constitutional remedies including writs) for its enforcement. He/she can move the High Court under Article 226.

(d) No guaranteed right to compensation in case of acquisition or requisition of the private property by the state.

Though the Fundamental Right to Property under Part III has been abolished, the Part III still carries two provisions which provide for the guaranteed right to compensation in case of acquisition or requisition of the private property by the state. These two cases where compensation has to be paid are:

(a) When the State acquires the property of a minority educational institution (Article 30); and

(b) When the State acquires the land held by a person under his personal cultivation and the land is within the statutory ceiling limits (Article 31 A).

The first provision was added by the 44th Amendment Act (1978), while the second provision was added by the 17th Amendment Act (1964).

Further, Articles 31A, 31B and 31C have been retained as exceptions to the fundamental rights.

EXCEPTIONS TO FUNDAMENTAL RIGHTS

1. Saving of Laws Providing for Acquisition of Estates, etc.

Article 31A[16] saves five categories of laws from being challenged and invalidated on the ground of contravention of the fundamental rights conferred by Article 14 (equality before law and equal protection of laws) and Article 19 (protection of six rights in respect of speech, assembly, movement, etc.). They are related to agricultural land reforms, industry and commerce and include the following:

(a) Acquisition of estates[17] and related rights by the State;
(b) Taking over the management of properties by the State;
(c) Amalgamation of corporations;
(d) Extinguishment or modification of rights of directors or shareholders of corporations; and
(e) Extinguishment or modification of mining leases.

Article 31A does not immunise a state law from judicial review unless it has been reserved for the president's consideration and has received his/her assent.

This Article also provides for the payment of compensation at market value when the state acquires the land held by a person under his/her personal cultivation and the land is within the statutory ceiling limit.

2. Validation of Certain Acts and Regulations

Article 31B saves the acts and regulations included in the Ninth Schedule[18] from being challenged and invalidated on the ground of contravention of any of the fundamental rights. Thus, the scope of Article 31B is wider than Article 31A. Article 31B immunises any law included in the Ninth Schedule from all the fundamental rights whether or not the law falls under any of the five categories specified in Article 31A.

However, in the *Kesavananda Bharati* case[18a] (1973), the Supreme Court rules that the acts and regulations that are included in the Ninth Schedule are open to challenge on the grounds of being violative of the basic structure of the condition. This was later clarified by the court in the *Waman Rao* case[18b] (1980) wherein it held that the various acts and regulations includes in the Ninth Schedule after 24 April, 1973 (date of judgement in the Kesavananda Bharati case) are valid only if they do not damage the basic structure of the constitution.

Again, in the *I.R. Coelho* case[19] (2007), the Supreme Court reaffirmed the above view. In this case, the court ruled that there could not be any blanket immunity from judicial review of the laws included in the Ninth Schedule. It held that judicial review is a 'basic feature' of the constitution and it could not be taken away putting a law under the Ninth Schedule. It said that the laws placed under the Ninth Schedule after 24 April, 1973, are open to challenge in court if they violated fundamental rights guaranteed under Articles 14, 15, 19 and 21 or the basic structure of the constitution.

Originally (in 1951), the Ninth Schedule contained only 13 acts and regulations but at present, their number is 282.[20] Of these, the acts and regulations of the state legislature deal with land reforms and abolition of the zamindari system and that of the Parliament deal with other matters.

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[16] Added by the 1st Constitutional Amendment Act of 1951 and amended by the 4th, 17th and 44th Amendments.

[17] The expression 'estate' includes any *jagir, inam, muafi* or other similar grant, any *janmam* right in Tamil Nadu and Kerala and any land held for agricultural purposes.

[18] Article 31B along with the Ninth Schedule was added by the 1st Constitutional Amendment Act of 1951.

[18a] *Kesavananda Bharati* vs. *State of Kerala* (1973).

[18b] *Waman Rao* vs. *Union of India* (1980).

[19] *I.R. Coelho* vs. *State of Tamil Nadu* (2007).

[20] Though the last entry is numbered 284, the actual total number is 282. This is because, the three entries (87, 92 and 130) have been deleted and one entry is numbered as 257A.

3. Saving of Laws Giving Effect to Certain Directive Principles

Article 31C, inserted by the 25th Amendment Act of 1971, contains the following two provisions:

(a) No law that seeks to implement the socialistic directive principles specified in Article 39(b)[21] or (c)[22] shall be void on the ground of contravention of the fundamental rights conferred by Article 14 (equality before law and equal protection of laws) or Article 19 (protection of six rights in respect of speech, assembly, movement, etc.)

(b) No law containing a declaration that it is for giving effect to such policy shall be questioned in any court on the ground that it does not give effect to such a policy.

In the *Kesavananda Bharati* case[23] (1973), the Supreme Court declared the above (b) provision as unconstitutional and invalid on the ground that judicial review is a basic feature of the Constitution and hence, cannot be taken away. However, the above (a) provision was held to be constitutional and valid.

The 42nd Amendment Act (1976) extended the scope of the above (a) provision by including within its protection any law to implement any of the directive principles specified in Part IV of the Constitution and not merely in Article 39 (b) or (c). However, this extention was declared as unconstitutional and invalid by the Supreme Court in the *Minerva Mills* case[24] (1980).

Article 31C does not immunise a state law from judicial review unless it has been reserved for the President's consideration and has received his/her assent.

[21] Article 39 (b) says—The State shall direct its policy towards securing that the ownership and control of the material resources of the community are so distributed as best to subserve the common good.

[22] Article 39 (c) says—The state shall direct its policy towards securing that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment.

[23] *Kesavananda Bharati* vs. *State of Kerala* (1973).

[24] *Minerva Mills* vs. *Union of India* (1980).

CRITICISM OF FUNDAMENTAL RIGHTS

The Fundamental Rights enshrined in Part III of the Constitution have met with a wide and varied criticism. The arguments of the critics are as follows:

1. Excessive Limitations

They are subjected to innumerable exceptions, restrictions, qualifications and explanations. Hence, the critics remarked that the Constitution grants Fundamental Rights with one hand and takes them away with the other. Jaspat Roy Kapoor went to the extent of saying that the chapter dealing with the fundamental rights should be renamed as 'Limitaions on Fundamental Rights' or 'Fundamental Rights and Limitations Thereon'.

2. No Social and Economic Rights

The list is not comprehensive as it mainly consists of political rights. It makes no provision for important social and economic rights like right to social security, right to work, right to employment, right to rest and leisure and so on. These rights are made available to the citizens of advanced democratic countries. Also, the socialistic constitutions of erstwhile USSR or China provided for such rights.

3. No Clarity

They are stated in a vague, indefinite and ambiguous manner. The various phrases and words used in the chapter like 'public order', 'minorities', 'reasonable restriction', 'public interest' and so on are not clearly defined. The language used to describe them is very complicated and beyond the comprehension of the common man. It is alleged that the Constitution was made by the lawyers for the lawyers. Sir Ivor Jennings called the Constitution of India a 'paradise for lawyers'.

4. | No Permanency

They are not sacrosanct or immutable as the Parliament can curtail or abolish them, as for example, the abolition of the fundamental right to property in 1978. Hence, they can become a play tool in the hands of politicians having majority support in the Parliament. The judicially innovated 'doctrine of basic structure' is the only limitation on the authority of Parliament to curtail or abolish the fundamental right.

5. | Suspension During Emergency

The suspension of their enforcement during the operation of National Emergency (except Articles 20 and 21) is another blot on the efficacy of these rights. This provision cuts at the roots of democratic system in the country by placing the rights of the millions of innocent people in continuous jeopardy. According to the critics, the Fundamental Rights should be enjoyable in all situations—Emergency or no Emergency.

6. | Expensive Remedy

The judiciary has been made responsible for defending and protecting these rights against the interference of the legislatures and executives. However, the judicial process is too expensive and hinders the common man from getting his/her rights enforced through the courts. Hence, the critics say that the rights benefit mainly the rich section of the Indian Society.

7. | Preventive Detention

The critics assert that the provision for preventive detention (Article 22) takes away the spirit and substance of the chapter on fundamental rights. It confers arbitrary powers on the State and negates individual liberty. It justifies the criticism that the Constitution of India deals more with the rights of the State against the individual than with the rights of the individual against the State. Notably, no democratic country in the world has made preventive detention as an integral part of their Constitutions as has been made in India.

8. | No Consistent Philosophy

According to some critics, the chapter on fundamental rights is not the product of any philosophical principle. Sir Ivor Jennings expressed this view when he said that the Fundamental Rights proclaimed by the Indian Constitution are based on no consistent philosophy.[25] The critics say that this creates difficulty for the Supreme Court and the high courts in interpreting the fundamental rights.

SIGNIFICANCE OF FUNDAMENTAL RIGHTS

In spite of the above criticism and shortcomings, the Fundamental Rights are significant in the following respects:

1. They constitute the bedrock of the democratic system in the country.
2. They provide necessary conditions for the material and moral protection of man.
3. They serve as a formidable bulwark of individual liberty.
4. They facilitate the establishment of rule of law in the country.
5. They protect the interests of minorities and weaker sections of society.
6. They strengthen the secular fabric of the Indian State.
7. They check the absoluteness of the authority of the government.
8. They lay down the foundation stone of social equality and social justice.

[25] *Sir Ivor Jennings wrote: 'A thread of nineteenth century liberalism runs through it; there are consequences of the political problems of Britain in it; there are relics of the bitter experience in opposition to British rule; and there is evidence of a desire to reform some of the social institutions which time and circumstances have developed in India. The result is a series of complex formulae, in twenty-four articles, some of them lengthy, which must become the basis of a vast and complicated case law'.*

9. They ensure the dignity and respect of individuals.
10. They facilitate the participation of people in the political and administrative process.

RIGHTS OUTSIDE PART III

Besides the Fundamental Rights included in Part III, there are certain other rights contained in other parts of the Constitution. These rights are known as constitutional rights or legal rights or non-fundamental rights. They are:

1. No tax shall be levied or collected except by authority of law (Article 265 in Part XII).
2. No person shall be deprived of his/her property save by authority of law (Article 300-A in Part XII).
3. Trade, commerce and intercourse throughout the territory of India shall be free (Article 301 in Part XIII).
4. The elections to the Lok Sabha and the State Legislative Assembly shall be on the basis of adult suffrage (Article 326 in Part XV).

Even though the above rights are equally justiciable, they are different from the Fundamental Rights. In case of violation of a Fundamental Right, the aggrieved person can directly move the Supreme Court for its enforcement under Article 32, which is in itself a fundamental right. But, in case of violation of the above rights, the aggrieved person cannot avail this constitutional remedy. He/she can move the High Court by an ordinary suit or under Article 226 (writ jurisdiction of high court).

Table 8.8 Articles Related to Fundamental Rights at a Glance

Article No.	Subject Matter
	General
12.	Definition of State
13.	Laws inconsistent with or in derogation of the Fundamental Rights
	Right to Equality
14.	Equality before law
15.	Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth
16.	Equality of opportunity in matters of public employment
17.	Abolition of untouchability
18.	Abolition of titles
	Right to Freedom
19.	Protection of certain rights regarding freedom of speech, etc.
20.	Protection in respect of conviction for offences
21.	Protection of life and personal liberty
21A.	Right to education
22.	Protection against arrest and detention in certain cases
	Right against Exploitation
23.	Prohibition of traffic in human beings and forced labour
24.	Prohibition of employment of children in factories, etc.

Article No.	Subject Matter
	Right to Freedom of Religion
25.	Freedom of conscience and free profession, practice and propagation of religion
26.	Freedom to manage religious affairs
27.	Freedom as to payment of taxes for promotion of any particular religion
28.	Freedom as to attendance at religious instruction or religious worship in certain educational institutions.
	Cultural and Educational Rights
29.	Protection of interests of minorities
30.	Right of minorities to establish and administer educational institutions
	Right to Property (Repealed)
31.	Compulsory acquisition of property—(Repealed)
	Saving of Certain Laws
31A.	Saving of laws providing for acquisition of estates, etc.
31B.	Validation of certain Acts and Regulations
31C.	Saving of laws giving effect to certain directive principles
31D.	Saving of laws in respect of anti-national activities—(Repealed)
	Right to Constitutional Remedies
32.	Remedies for enforcement of rights conferred by this part
32A.	Constitutional validity of State laws not to be considered in proceedings under Article 32—(Repealed)
33.	Power of Parliament to modify the rights conferred by this part in their application to forces, etc.
34.	Restriction on rights conferred by this part while martial law is in force in any area
35.	Legislation to give effect to the provisions of this part

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CHAPTER 9 Directive Principles of State Policy

The Directive Principles of State Policy are enumerated in Part IV of the Constitution from Articles 36 to 51[1]. *The framers of the Constitution borrowed this idea from the Irish Constitution of 1937, which had copied it from the Spanish Constitution.* Dr. B.R. Ambedkar described these principles as 'novel features' of the Indian Constitution. The Directive Principles along with the Fundamental Rights contain the philosophy of the Constitution and is the soul of the Constitution. Granville Austin has described the Directive Principles and the Fundamental Rights as the 'Conscience of the Constitution'[2].

FEATURES OF THE DIRECTIVE PRINCIPLES

1. The phrase 'Directive Principles of State Policy' denotes the ideals that the State should keep in mind while formulating policies and enacting laws. These are the constitutional instructions or recommendations to the State in legislative, executive and administrative matters. According to Article 36, the term 'State' in Part IV has the same meaning as in Part III dealing with Fundamental Rights. Therefore, it includes the legislative and executive organs of the central and state governments, all local authorities and all other public authorities in the country.
2. The Directive Principles resemble the 'Instrument of Instructions' enumerated in the Government of India Act of 1935. In the words of Dr. B.R. Ambedkar, 'the Directive Principles are like the instrument of instructions, which were issued to the Governor-General and to the Governors of the colonies of India by the British Government under the Government of India Act of 1935. What is called Directive Principles is merely another name for the instrument of instructions. The only difference is that they are instructions to the legislature and the executive'.
3. The Directive Principles constitute a very comprehensive economic, social and political programme for a modern democratic State. They aim at realising the high ideals of justice, liberty, equality and fraternity as outlined in the Preamble to the Constitution. They embody the concept of a 'welfare state' and not that of a 'police state', which existed during the colonial era[3]. In brief, they seek to establish economic and social democracy in the country.
4. The Directive Principles are non-justiciable in nature, that is, they are not legally

[1] Actually, Directive Principles are mentioned in Articles 38 to 51. Article 36 deals with the definition of State while Article 37 deals with the nature and significance of Directive Principles.

[2] Granville Austin, *The Indian Constitution—Cornerstone of a Nation*, Oxford, 1966, p. 75.

[3] A 'Police State' is mainly concerned with the maintenance of law and order and defence of the country against external aggression. Such a restrictive concept of state is based on the nineteenth century theory of individualism or laissez-faire.

enforceable by the courts for their violation. Therefore, the government (Central, state and local) cannot be compelled to implement them. Nevertheless, the Constitution (Article 37) itself says that these principles are fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.

5. The Directive Principles, though non-justiciable in nature, help the courts in examining and determining the constitutional validity of a law. The Supreme Court has ruled many a times that in determining the constitutionality of any law, if a court finds that the law in question seeks to give effect to a Directive Principle, it may consider such law to be 'reasonable' in relation to Article 14 (equality before law) or Article 19 (six freedoms) and thus save such law from unconstitutionality.

CLASSIFICATION OF THE DIRECTIVE PRINCIPLES

The Constitution does not contain any classification of Directive Principles. However, on the basis of their content and direction, they can be classified into three broad categories, viz, socialistic, Gandhian and liberal-intellectual.

Socialistic Principles

These principles reflect the ideology of socialism. They lay down the framework of a democratic socialist state, aim at providing social and economic justice, and set the path towards welfare state. They direct the state:

1. To promote the welfare of the people by securing a social order permeated by justice—social, economic and political—and to minimise inequalities in income, status, facilities and opportunities[4] (Article 38).
2. To secure (a) the right to adequate means of livelihood for all citizens; (b) the equitable distribution of material resources of the community for the common good; (c) prevention of concentration of wealth and means of production; (d) equal pay for equal work for men and women; (e) preservation of the health and strength of workers and children against forcible abuse; and (f) opportunities for healthy development of children and protection of childhood and youth against exploitation and against moral and material abandonment[5] (Article 39).
3. To promote equal justice and to provide free legal aid to the poor[6] (Article 39A).
4. To secure the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement (Article 41).
5. To make provision for just and humane conditions of work and maternity relief (Article 42).
6. To secure a living wage[7], a decent standard of life and social and cultural opportunities for all workers (Article 43).
7. To take steps to secure the participation of workers in the management of industries[8] (Article 43A).
8. To raise the level of nutrition and the standard of living of people and to improve public health (Article 47).

Gandhian Principles

These principles are based on Gandhian ideology. They represent the programme of reconstruction enunciated by Gandhi during the national movement. In order to fulfil the

[4]The second aspect of this provision was added by the 44th Constitutional Amendment Act of 1978.

[5]The first aspect of point (f) was added by the 42nd Constitutional Amendment Act of 1976.

[6]This Directive was added by the 42nd Constitutional Amendment Act of 1976.

[7]'Living wage' is different from 'minimum wage', which includes the bare needs of life like food, shelter and clothing. In addition to these bare needs, a 'living wage' includes education, health, insurance, etc. A 'fair wage' is a mean between 'living wage' and 'minimum wage'.

[8]This Directive was added by the 42nd Constitutional Amendment Act of 1976.

dreams of Gandhi, some of his ideas were included as Directive Principles. They require the State:

1. To organise village panchayats and endow them with necessary powers and authority to enable them to function as units of self-government (Article 40).
2. To promote cottage industries on an individual or co-operation basis in rural areas (Article 43).
3. To promote voluntary formation, autonomous functioning, democratic control and professional management of co-operative societies[8a] (Article 43B).
4. To promote the educational and economic interests of SCs, STs, and other weaker sections of the society and to protect them from social injustice and exploitation (Article 46).
5. To prohibit the consumption of intoxicating drinks and drugs which are injurious to health (Article 47).
6. To prohibit the slaughter of cows, calves and other milch and draught cattle and to improve their breeds (Article 48).

Liberal–Intellectual Principles

The principles included in this category represent the ideology of liberalism. They direct the state:

1. To secure for all citizens a uniform civil code throughout the country (Article 44).
2. To provide early childhood care and education for all children until they complete the age of six years[9] (Article 45).
3. To organise agriculture and animal husbandry on modern and scientific lines (Article 48).
4. To protect and improve the environment and to safeguard forests and wild life[10] (Article 48A).
5. To protect monuments, places and objects of artistic or historic interest which are declared to be of national importance (Article 49).
6. To separate the judiciary from the executive in the public services of the State (Article 50).
7. To promote international peace and security and maintain just and honourable relations between nations; to foster respect for international law and treaty obligations, and to encourage settlement of international disputes by arbitration (Article 51).

NEW DIRECTIVE PRINCIPLES

The 42nd Amendment Act of 1976 added four new Directive Principles to the original list. They require the State:

1. To secure opportunities for healthy development of children (Article 39).
2. To promote equal justice and to provide free legal aid to the poor (Article 39A).
3. To take steps to secure the participation of workers in the management of industries (Article 43A).
4. To protect and improve the environment and to safeguard forests and wild life (Article 48A).

The 44th Amendment Act of 1978 added one more Directive Principle, which requires the State to minimise inequalities in income, status, facilities and opportunities (Article 38).

The 86th Amendment Act of 2002 changed the subject-matter of Article 45 and made elementary education a fundamental right under Article 21A. The amended directive requires the State to provide early childhood care and education for all children until they complete the age of six years.

The 97th Amendment Act of 2011 added a new Directive Principle relating to co-operative societies. It requires the state to promote voluntary formation, autonomous functioning, democratic control and professional management of co-operative societies (Article 43B).

[8a] This Directive was added by the 97th Constitutional Amendment Act of 2011.

[9] This Directive was changed by the 86th Constitutional Amendment Act of 2002. Originally, it made a provision for free and compulsory education for all children until they complete the age of 14 years.

[10] This Directive was added by the 42nd Constitutional Amendment Act of 1976.

SANCTION BEHIND DIRECTIVE PRINCIPLES

Sir B.N. Rau, the Constitutional Advisor to the Constituent Assembly, recommended that the rights of an individual should be divided into two categories—justiciable and non-justiciable, which was accepted by the Drafting Committee. Consequently, the Fundamental Rights, which are justiciable in nature, are incorporated in Part III and the Directive Principles, which are non-justiciable in nature, are incorporated in Part IV of the Constitution. The specific differences between the two are summarised in Table 9.1.

Though the Directive Principles are non-justiciable, the Constitution (Article 37) makes it clear that 'these principles are fundamental in the governance of the country and it shall be the duty of the state to apply these principles in making laws'. Thus, they impose a moral obligation on the state authorities for their application, but the real force behind them is political, that is, public opinion. As observed by Alladi Krishna Swamy Ayyar, 'no ministry responsible to the people can afford light-heartedly to ignore the provisions in Part IV of the Constitution'. Similarly, Dr. B.R. Ambedkar said in the Constituent Assembly that 'a government which rests on popular vote can hardly ignore the Directive Principles while shaping its policy. If any government ignores them, it will certainly have to answer for that before the electorate at the election time'[11].

The framers of the Constitution made the Directive Principles non-justiciable and legally non-enforceable because:

1. The country did not possess sufficient financial resources to implement them.
2. The presence of vast diversity and backwardness in the country would stand in the way of their implementation.
3. The newly born independent Indian State with its many preoccupations might be crushed under the burden unless it was free to decide the order, the time, the place and the mode of fulfilling them.

'The Constitution makers, therefore, taking a pragmatic view, refrained from giving teeth to these principles. They believed more in an

Table 9.1 Distinction Between Fundamental Rights and Directive Principles

Fundamental Rights	Directive Principles
1. These are negative as they prohibit the State from doing certain things.	1. These are positive as they require the State to do certain things.
2. These are justiciable, that is, they are legally enforceable by the courts in case of their violation.	2. These are non-justiciable, that is, they are not legally enforceable by the courts for their violation.
3. They aim at establishing political democracy in the country.	3. They aim at establishing social and economic democracy in the country.
4. These have legal sanctions.	4. These have moral and political sanctions.
5. They promote the welfare of the individual. Hence, they are personal and individualistic.	5. They promote the welfare of the community. Hence, they are societarian and socialistic.
6. They do not require any legislation for their implementation. They are automatically enforced.	6. They require legislation for their implementation. They are not automatically enforced.
7. The courts are bound to declare a law violative of any of the Fundamental Rights as unconstitutional and invalid.	7. The courts cannot declare a law violative of any of the Directive Principles as unconstitutional and invalid. However, they can uphold the validity of a law on the ground that it was enacted to give effect to a directive.

[11] *Constituent Assembly Debates*, volume VII, p. 476.

awakened public opinion rather than in court procedures as the ultimate sanction for the fulfilment of these principles'[12].

CRITICISM OF THE DIRECTIVE PRINCIPLES

The Directive Principles of State Policy have been criticised by some members of the Constituent Assembly as well as other constitutional and political experts on the following grounds:

1. No Legal Force

The Directives have been criticised mainly because of their non-justiciable character. While K.T. Shah dubbed them as 'pious superfluities' and compared them with 'a cheque on a bank, payable only when the resources of the bank permit'[13], Nasiruddin contended that these principles are 'no better than the new year's resolutions, which are broken on the second of January'. Even as T.T. Krishnamachari described the Directives as 'a veritable dustbin of sentiments', K C Wheare called them as a 'manifesto of aims and aspirations' and opined that they serve as mere 'moral homily', and Sir Ivor Jennings thought they are only as 'pious aspirations'.

2. Illogically Arranged

Critics opine that the Directives are not arranged in a logical manner based on a consistent philosophy. According to N Srinivasan, 'the Directives are neither properly classified nor logically arranged. The declaration mixes up relatively unimportant issues with the most vital economic and social questions. It combines rather incongruously the modern with the old and provisions suggested by the reason and science with provisions based purely on sentiment and prejudice'[14]. Sir Ivor Jennings too pointed out that these principles have no consistent philosophy.

3. Conservative

According to Sir Ivor Jennings, the Directives are based on the political philosophy of the 19th century England. He remarked: 'The ghosts of Sydney Webb and Beatrice Webb stalk through the pages of the text. Part IV of the Constitution expresses Fabian Socialism without the socialism'. He opined that the Directives 'are deemed to be suitable in India in the middle of the twentieth century. The question whether they are suitable for the twenty-first century cannot be answered; but it is quite probable that they will be entirely out moded.'[15]

4. Constitutional Conflict

K Santhanam has pointed out that the Directives lead to a constitutional conflict (a) between the Centre and the states, (b) between the President and the Prime Minister, and (c) between the governor and the chief minister. According to him, the Centre can give directions to the states with regard to the implementation of these principles, and in case of non-compliance, can dismiss the state government. Similarly, when the Prime Minister gets a bill (which violates the Directive Principles) passed by the Parliament, the president may reject the bill on the ground that these principles are fundamental to the governance of the country and hence, the ministry has no right to ignore them. The same constitutional conflict may occur between the governor and the chief minister at the state level.

UTILITY OF DIRECTIVE PRINCIPLES

In spite of the above criticisms and shortcomings, the Directive Principles are not an unnecessary appendage to the Constitution. The Constitution itself declares that they are fundamental to the governance of the country. According to L.M. Singhvi, an eminent jurist

[12]M.P. Jain, *Indian Constitutional Law,* Wadhwa, Third Edition (1978), p. 595.

[13]*Constituent Assembly Debates,* Volume VII, p. 470.

[14]N. Srinivasan, *Democratic Government in India,* p. 182.

[15]Sir Ivor Jennings, *Some Characteristics of the Indian Constitution*, 1953, pp. 31–33.

and diplomat, 'the Directives are the life giving provisions of the Constitution. They constitute the stuff of the Constitution and its philosophy of social justice'[16]. M.C. Chagla, former Chief Justice of India, is of the opinion that, 'if all these principles are fully carried out, our country would indeed be a heaven on earth. India would then be not only democracy in the political sense, but also a welfare state looking after the welfare of its citizens'[17]. Dr. B.R. Ambedkar had pointed out that the Directives have great value because they lay down that the goal of Indian polity is 'economic democracy' as distinguished from 'political democracy'. Granville Austin opined that the Directive Principles are 'aimed at furthering the goals of the social revolution or to foster this revolution by establishing the conditions necessary for its achievement'[18]. Sir B.N. Rau, the constitutional advisor to the Constituent Assembly, stated that the Directive Principles are intended as 'moral precepts for the authorities of the state. They have at least an educative value.'

According to M.C. Setalvad, the former Attorney General of India, the Directive Principles, although confer no legal rights and create no legal remedies, are significant and useful in the following ways:

1. They are like an 'Instrument of Instructions' or general recommendations addressed to all authorities in the Indian Union. They remind them of the basic principles of the new social and economic order, which the Constitution aims at building.
2. They have served as useful beacon-lights to the courts. They have helped the courts in exercising their power of judicial review, that is, the power to determine the constitutional validity of a law.
3. They form the dominating background to all State action, legislative or executive and also a guide to the courts in some respects.
4. They amplify the Preamble, which solemnly resolves to secure to all citizens of India justice, liberty, equality and fraternity.

The Directives also play the following roles:

1. They facilitate stability and continuity in domestic and foreign policies in political, economic and social spheres in spite of the changes of the party in power.
2. They are supplementary to the fundamental rights of the citizens. They are intended to fill in the vacuum in Part III by providing for social and economic rights.
3. Their implementation creates a favourable atmosphere for the full and proper enjoyment of the fundamental rights by the citizens. Political democracy, without economic democracy, has no meaning.
4. They enable the opposition to exercise influence and control over the operations of the government. The Opposition can blame the ruling party on the ground that its activities are opposed to the Directives.
5. They serve as a crucial test for the performance of the government. The people can examine the policies and programmes of the government in the light of these constitutional declarations.
6. They serve as common political manifesto. 'A ruling party, irrespective of its political ideology, has to recognise the fact that these principles are intended to be its guide, philosopher and friend in its legislative and executive acts'[19].

CONFLICT BETWEEN FUNDAMENTAL RIGHTS AND DIRECTIVE PRINCIPLES

The justiciability of Fundamental Rights and non-justiciability of Directive Principles on the one hand and the moral obligation of State to implement Directive Principles (Article 37) on the other hand have led to a conflict between the two since the commencement of

[16] *Journal of Constitutional and Parliamentary Studies*, June 1975.

[17] M.C. Chagla, *An Ambassador Speaks*, p. 35.

[18] Granville Austin, *The Indian Constitution—Cornerstone of a Nation*, Oxford, 1966, pp. 50–52.

[19] P.B. Gajendragadker, *The Constitution of India (Its Philosophy and Postulates)*, p. 11.

the Constitution. In the *Champakam Dorairajan* case[20] (1951), the Supreme Court ruled that in case of any conflict between the Fundamental Rights and the Directive Principles, the former would prevail. It declared that the Directive Principles have to conform to and run as subsidiary to the Fundamental Rights. But, it also held that the Fundamental Rights could be amended by the Parliament by enacting constitutional amendment acts. As a result, the Parliament made the First Amendment Act (1951), the Fourth Amendment Act (1955) and the Seventeenth Amendment Act (1964) to implement some of the Directives.

The above situation underwent a major change in 1967 following the Supreme Court's judgement in the *Golaknath* case[21] (1967). In that case, the Supreme Court ruled that the Parliament cannot take away or abridge any of the Fundamental Rights, which are 'sacrosanct' in nature. In other words, the Court held that the Fundamental Rights cannot be amended for the implementation of the Directive Principles.

The Parliament reacted to the Supreme Court's judgement in the *Golaknath Case* (1967) by enacting the 24th Amendment Act (1971) and the 25th Amendment Act (1971). The 24th Amendment Act declared that the Parliament has the power to abridge or take away any of the Fundamental Rights by enacting Constitutional Amendment Acts. The 25th Amendment Act inserted a new Article 31C which contained the following two provisions:

1. No law which seeks to implement the socialistic Directive Principles specified in Article 39 (b)[22] and (c)[23] shall be void on the ground of contravention of the Fundamental Rights conferred by Article 14 (equality before law and equal protection of laws), Article 19 (protection of six rights in respect of speech, assembly, movement, etc) or Article 31 (right to property).
2. No law containing a declaration for giving effect to such policy shall be questioned in any court on the ground that it does not give effect to such a policy.

In the *Kesavananda Bharati* case[24] (1973), the Supreme Court declared the above second provision of Article 31C as unconstitutional and invalid on the ground that judicial review is a basic feature of the Constitution and hence, cannot be taken away. However, the above first provision of Article 31C was held to be constitutional and valid.

Later, the 42nd Amendment Act (1976) extended the scope of the above first provision of Article 31C by including within its protection any law to implement any of the Directive Principles and not merely those specified in Article 39 (b) and (c). In other words, the 42nd Amendment Act accorded the position of legal primacy and supremacy to the Directive Principles over the Fundamental Rights conferred by Articles 14, 19 and 31. However, this extension was declared as unconstitutional and invalid by the Supreme Court in the *Minerva Mills* case[25] (1980). It means that the Directive Principles were once again made subordinate to the Fundamental Rights. But the Fundamental Rights conferred by Article 14 and Article 19 were accepted as subordinate to the Directive Principles specified in Article 39 (b) and (c). Further, Article 31 (right to property) was omitted by the 44th Amendment Act (1978).

In the *Minerva Mills* case (1980), the Supreme Court also held that 'the Indian Constitution is founded on the bedrock of the balance between the Fundamental Rights and the Directive Principles. They together constitute the core of commitment to social revolution. They are like two wheels of a chariot, one no

[20] *State of Madras* vs. *Champakam Dorairajan* (1951).
[21] *Golak Nath* vs. *State of Punjab* (1967).
[22] Article 39 (b) says: The State shall direct its policy towards securing that the ownership and control of the material resources of the community are so distributed as best to subserve the common good.
[23] Article 39 (c) says: The state shall direct its policy towards securing that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment.
[24] *Kesavananda Bharati* vs. *State of Kerala* (1973).
[25] *Minerva Mills* vs. *Union of India* (1980).

less than the other. To give absolute primacy to one over the other is to disturb the harmony of the Constitution. This harmony and balance between the two is an essential feature of the basic structure of the Constitution. The goals set out by the Directive Principles have to be achieved without the abrogation of the means provided by the Fundamental Rights'.

Therefore, the present position is that the Fundamental Rights enjoy supremacy over the Directive Principles. Yet, this does not mean that the Directive Principles cannot be implemented. The Parliament can amend the Fundamental Rights for implementing the Directive Principles, so long as the amendment does not damage or destroy the basic structure of the Constitution.

IMPLEMENTATION OF DIRECTIVE PRINCIPLES

Since 1950, the successive governments at the Centre and in the states have made several laws and formulated various programmes for implementing the Directive Principles. These are mentioned below:

1. The Planning Commission was established in 1950 to take up the development of the country in a planned manner. The successive Five Year Plans aimed at securing socio-economic justice and reducing inequalities of income, status and opportunities. In 2015, the Planning Commission was replaced by a new body called NITI Aayog (National Institution for Transforming India).
2. Almost all the states have passed land reform laws to bring changes in the agrarian society and to improve the conditions of the rural masses. These measures include **(a)** abolition of intermediaries like zamindars, jagirdars, inamdars, etc; **(b)** tenancy reforms like security of tenure, fair rents, etc; **(c)** imposition of ceilings on land holdings; **(d)** distribution of surplus land among the landless labourers; and **(e)** cooperative farming.
3. The Minimum Wages Act (1948), the Payment of Wages Act (1936), the Payment of Bonus Act (1965), the Contract Labour Regulation and Abolition Act (1970), the Child Labour Prohibition and Regulation Act (1986), the Bonded Labour System Abolition Act (1976), the Trade Unions Act (1926), the Factories Act (1948), the Mines Act (1952), the Industrial Disputes Act (1947), the Workmen's Compensation Act (1923) and so on have been enacted to protect the interests of the labour sections. In 2006, the government banned the child labour. In 2016, the Child Labour Prohibition and Regulation Act (1986) was renamed as the Child and Adolescent Labour Prohibition and Regulation Act, 1986.
4. The Maternity Benefit Act (1961) and the Equal Remuneration Act (1976) have been made to protect the interests of women workers.
5. Various measures have been taken to utilise the financial resources for promoting the common good. These include nationalisation of life insurance (1956), the nationalisation of fourteen leading commercial banks (1969), nationalisation of general insurance (1971), abolition of Privy Purses (1971) and so on.
6. The Legal Services Authorities Act (1987) has established a nation-wide network to provide free and competent legal aid to the poor and to organise lok adalat for promoting equal justice. Lok adalat is a statutory forum for conciliatory settlement of legal disputes. It has been given the status of a civil court. Its awards are enforceable, binding on the parties and final as no appeal lies before any court against them.
7. Khadi and Village Industries Board, Khadi and Village Industries Commission, Small-Scale Industries Board, National Small Industries Corporation, Handloom Board, Handicrafts Board, Coir Board, Silk Board and so on have been set up

for the development of cottage industries in rural areas.

8. The Community Development Programme (1952), Hill Area Development Programme (1960), Drought-Prone Area Programme (1973), Minimum Needs Programme (1974), Integrated Rural Development Programme (1978), Jawahar Rozgar Yojana (1989), Swarnajayanti Gram Swarozgar Yojana (1999), Sampoorna Grameena Rozgar Yojana (2001), National Rural Employment Guarantee Programme (2006) and so on have been launched for raising the standard of living of people.
9. The Wildlife (Protection) Act, 1972 and the Forest (Conservation) Act, 1980, have been enacted to safeguard the wildlife and the forests respectively. Further, the Water and Air Acts have provided for the establishment of the Central and State Pollution Control Boards, which are engaged in the protection and improvement of environment. The National Forest Policy (1988) aims at the protection, conservation and development of forests.
10. Agriculture has been modernised by providing improved agricultural inputs, seeds, fertilisers and irrigation facilities. Various steps have also been taken to organise animal husbandry on modern and scientific lines.
11. Three-tier panchayati raj system (at village, taluka and zila levels) has been introduced to translate into reality Gandhiji's dream of every village being a republic. The 73rd Amendment Act (1992) has been enacted to provide constitutional status and protection to these panchayati raj institutions.
12. Seats are reserved for SCs, STs and other weaker sections in educational institutions, government services and representative bodies. The Untouchability (Offences) Act, 1955, which was renamed as the Protection of Civil Rights Act in 1976 and the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, have been enacted to protect the SCs and STs from social injustice and exploitation. The 65th Constitutional Amendment Act of 1990 established the National Commission for Scheduled Castes and Scheduled Tribes to protect the interests of SCs and STs. Later, the 89th Constitutional Amendment Act of 2003 bifurcated this combined commission into two separate bodies, namely, National Commission for Schedule Castes and National Commission for Schedule Tribes.

12a. Various national-level commissions have been established to promote and protect the social, educational and economic interests of the weaker sections of the society. These include the National Commission for Backward Classes (1993), the National Commission for Minorities (1993), the National Commission for Women (1992) and the National Commission for Protection of Child Rights (2007). Further, the 102nd Amendment Act of 2018 conferred a constitutional status on the National Commission for Backward Classes and also enlarged its functions.

12b. In 2019, the central government issued orders providing 10% reservation to the Economically Weaker Sections (EWSs) in admission to educational institutions and civil posts and services in the Government of India. The benefit of this reservation can be availed by the persons belonging to EWSs who are not covered under any of the existing schemes of reservations for SCs, STs and OBCs. This reservation was facilitated by the 103rd Amendment Act of 2019.

13. The Criminal Procedure Code (1973) separated the judiciary from the executive in the public services of the state. Prior to this separation, the district authorities like the collector, the sub-divisional officer, the tehsildar and so on used to exercise judicial powers along with the traditional executive powers. After the separation, the judicial powers

were taken away from these executive authorities and vested in the hands of district judicial magistrates who work under the direct control of the state high court.

14. The Ancient and Historical Monument and Archaeological Sites and Remains Act (1951) has been enacted to protect the monuments, places and objects of national importance.
15. Primary health centres and hospitals have been established throughout the country to improve the public health. Also, special programmes have been launched to eradicate widespread diseases like malaria, TB, leprosy, AIDS, cancer, filaria, kala-azar, guineaworm, yaws, Japanese encephalitis and so on.
16. Laws to prohibit the slaughter of cows, calves, and bullocks have been enacted in some states.
17. Some states have initiated the old age pension schemes for people above 65 years.
18. India has been following the policy of non-alignment and panchsheel to promote international peace and security.

In spite of the above steps by the Central and state governments, the Directive Principles have not been implemented fully and effectively due to several reasons like inadequate financial resources, unfavourable socio-economic conditions, population explosion, strained Centre-state relations and so on.

DIRECTIVES OUTSIDE PART IV

Apart from the Directives included in Part IV, there are some other Directives contained in other Parts of the Constitution. They are:

1. **Claims of SCs and STs to Services:** The claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or a State (Article 335 in Part XVI).
2. **Instruction in mother tongue:** It shall be the endeavour of every state and every local authority within the state to provide adequate facilities for instruction in the mother-tongue at the primary stage of education to children belonging to linguistic minority groups (Article 350-A in Part XVII).
3. **Development of the Hindi Language:** It shall be the duty of the Union to promote the spread of the Hindi language and to develop it so that it may serve as a medium of expression for all the elements of the composite culture of India (Article 351 in Part XVII).

The above Directives are also non-justiciable in nature. However, they are also given equal importance and attention by the judiciary on the ground that all parts of the constitution must be read together.

Table 9.2 Articles Related to Directive Principles of State Policy at a Glance

Article No.	Subject Matter
36.	Definition of State
37.	Application of the principles contained in this part
38.	State to secure a social order for the promotion of welfare of the people
39.	Certain principles of policy to be followed by the State
39A.	Equal justice and free legal aid
40.	Organisation of village panchayats
41.	Right to work, to education and to public assistance in certain cases

Article No.	Subject Matter
42.	Provision for just and humane conditions of work and maternity relief
43.	Living wage, etc., for workers
43A.	Participation of workers in management of industries
43B.	Promotion of co-operative societies
44.	Uniform civil code for the citizens
45.	Provision for early childhood care and education to children below the age of six years
46.	Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections
47.	Duty of the State to raise the level of nutrition and the standard of living and to improve public health
48.	Organisation of agriculture and animal husbandry
48A.	Protection and improvement of environment and safeguarding of forests and wildlife
49.	Protection of monuments and places and objects of national importance
50.	Separation of judiciary from executive
51.	Promotion of international peace and security

CHAPTER 10 Fundamental Duties

Though the rights and duties of the citizens are correlative and inseparable, the original constitution contained only the fundamental rights and not the fundamental duties. In other words, the framers of the Constitution did not feel it necessary to incorporate the fundamental duties of the citizens in the Constitution. However, they incorporated the duties of the State in the Constitution in the form of Directive Principles of State Polity. Later in 1976, the fundamental duties of citizens were added in the Constitution. In 2002, one more Fundamental Duty was added.

The Fundamental Duties in the Indian Constitution are inspired by the Constitution of erstwhile USSR. Notably, none of the Constitutions of major democratic countries like USA, Canada, France, Germany, Australia and so on specifically contain a list of duties of citizens. Japanese Constitution is, perhaps, the only democratic Constitution in world which contains a list of duties of citizens. The socialist countries, on the contrary, gave equal importance to the fundamental rights and duties of their citizens. Hence, the Constitution of erstwhile USSR declared that the citizen's exercise of their rights and freedoms was inseparable from the performance of their duties and obligations.

SWARAN SINGH COMMITTEE RECOMMENDATIONS

In 1976, the Congress Party set up the Sardar Swaran Singh Committee to make recommendations about fundamental duties, the need and necessity of which was felt during the operation of the internal emergency (1975–1977). The committee recommended the inclusion of a separate chapter on fundamental duties in the Constitution. It stressed that the citizens should become conscious that in addition to the enjoyment of rights, they also have certain duties to perform as well. The Congress Government at Centre accepted these recommendations and enacted the 42nd Constitutional Amendment Act in 1976. This amendment added a new part, namely, Part IVA to the Constitution. This new part consists of only one Article, that is, Article 51A which for the first time specified a code of ten fundamental duties of the citizens. The ruling Congress party declared the non-inclusion of fundamental duties in the Constitution as a historical mistake and claimed that what the framers of the Constitution failed to do was being done now.

Though the Swaran Singh Committee suggested the incorporation of eight Fundamental Duties in the Constitution, the 42nd Constitutional Amendment Act (1976) included ten Fundamental Duties.

Interestingly, certain recommendations of the Committee were not accepted by the Congress Party and hence, not incorporated in the Constitution. These include:

1. The Parliament may provide for the imposition of such penalty or punishment as may be considered appropriate for any non-compliance with or refusal to observe any of the duties.
2. No law imposing such penalty or punishment shall be called in question in any

court on the ground of infringement of any of Fundamental Rights or on the ground of repugnancy to any other provision of the Constitution.

3. Duty to pay taxes should also be a Fundamental Duty of the citizens.

LIST OF FUNDAMENTAL DUTIES

According to Article 51A, it shall be the duty of every citizen of India:

(a) to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;

(b) to cherish and follow the noble ideals that inspired the national struggle for freedom;

(c) to uphold and protect the sovereignty, unity and integrity of India;

(d) to defend the country and render national service when called upon to do so;

(e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities and to renounce practices derogatory to the dignity of women;

(f) to value and preserve the rich heritage of the country's composite culture;

(g) to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures;

(h) to develop scientific temper, humanism and the spirit of inquiry and reform;

(i) to safeguard public property and to abjure violence;

(j) to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement; and

(k) to provide opportunities for education to his/her child or ward between the age of six and fourteen years. This duty was added by the 86th Constitutional Amendment Act, 2002.

FEATURES OF THE FUNDAMENTAL DUTIES

Following points can be noted with regard to the characteristics of the Fundamental Duties:

1. Some of them are moral duties while others are civic duties. For instance, cherishing noble ideals of freedom struggle is a moral precept and respecting the Constitution, National Flag and National Anthem is a civic duty.
2. They refer to such values which have been a part of the Indian tradition, mythology, religions and practices. In other words, they essentially contain just a codification of tasks integral to the Indian way of life.
3. Unlike some of the Fundamental Rights which extend to all persons whether citizens or foreigners[1], the Fundamental Duties are confined to citizens only and do not extend to foreigners.
4. Like the Directive Principles, the fundamental duties are also non-justiciable. The Constitution does not provide for their direct enforcement by the courts. Moreover, there is no legal sanction against their violation. However, the Parliament is free to enforce them by suitable legislation.

CRITICISM OF FUNDAMENTAL DUTIES

The Fundamental Duties mentioned in Part IVA of the Constitution have been criticised on the following grounds:

1. The list of duties is not exhaustive as it does not cover other important duties like casting vote, paying taxes, family planning and so on. In fact, duty to pay taxes was recommended by the Swaran Singh Committee.

[1]The Fundamental Rights guaranteed by Articles 14, 20, 21, 21A, 22, 23, 24, 25, 26, 27 and 28 are available to all persons whether citizens or foreigners.

2. Some of the duties are vague, ambiguous and difficult to be understood by the common man. For example, different interpretations can be given to the phrases like 'noble ideals', 'composite culture', 'scientific temper' and so on[2].
3. They have been described by the critics as a code of moral precepts due to their non-justiciable character. Interestingly, the Swaran Singh Committee had suggested for penalty or punishment for the non-performance of Fundamental Duties.
4. Their inclusion in the Constitution was described by the critics as superfluous. This is because the duties included in the Constitution as fundamental would be performed by the people even though they were not incorporated in the Constitution[3].
5. The critics said that the inclusion of fundamental duties as an appendage to Part IV of the Constitution has reduced their value and significance. They should have been added after Part III so as to keep them on par with Fundamental Rights.

SIGNIFICANCE OF FUNDAMENTAL DUTIES

In spite of criticisms and opposition, the fundamental duties are considered significant from the following viewpoints:

1. They serve as a reminder to the citizens that while enjoying their rights, they should also be conscious of duties they owe to their country, their society and to their fellow citizens.
2. They serve as a warning against the anti-national and antisocial activities like burning the national flag, destroying public property and so on.
3. They serve as a source of inspiration for the citizens and promote a sense of discipline and commitment among them. They create a feeling that the citizens are not mere spectators but active participants in the realisation of national goals.
4. They help the courts in examining and determining the constitutional validity of a law. In *Mohan Kumar Singhania* case[4] (1991), the Supreme Court held that Article 51A (fundamental duties) can be used to interpret ambigious laws in order to determine their constitutionality. Further, in *Ramlila Maidan Incident* case[5] (2012), the court observed that a common thread runs through Parts III, IV and IVA of the constitution. One Part enumerates

[2]D.D. Chawla, the then president of the National Forum of Lawyers and Legal Aid, Delhi, observed: 'The duties may be spelt out in a more concrete form, one is left guessing the noble ideals. To some even the Bhagat Singh cult may be such an ideal as inspired our national struggle. Again what is the rich heritage of our composite culture and what is scientific temper, humanism and the spirit of inquiry and reform? The values are beyond the ken of the general run of the people and carry no meaning to them. Duties should be such and so worded as to catch the imagination of the common man.'

D.D. Chawla, 'The Concept of Fundamental Duties', *Socialist India* (New Delhi), October 23, 1976, pp. 44–45.

[3]C.K. Daphtary, former Attorney General of India, while opposing the inclusion of fundamental duties in the Constitution, said that more than 99.9 per cent of the citizens were law-abiding and there was no need to tell them about their duties. He argued that as long as the people are satisfied and contended, they willingly perform their duties. He said, 'To tell them what their duties are implies that they are not content. If that is the case after 26 years, it is not their fault'. A.K. Sen also opposed the inclusion of fundamental duties in the Constitution and remarked, 'A democratic set-up, instead of thriving on the willing cooperation and confidence of people, is reduced to the position of a harsh school master asking the student to stand up on the class room bench because he has not done the home work. To begin with, it were the people of India who created the Sovereign Democratic Republic of India in 1950, but the Republic is now claiming to be the master of the citizens enjoining habitual obedience to its command to do his duty. The state's confidence in the citizens is obviously shaken'.

[4]*Mohan Kumar Singhania* vs. *Union of India* (1991).

[5]Re, *Ramlila Maidan Incident* (2012).

the fundamental rights, the second declares the fundamental principles of governance and the third lays down the fundamental duties of the citizens. While interpreting any of these provisions, it shall always be advisable to examine the scope and impact of such interpretation on all the three constitutional aspects emerging from these Parts.

5. They are enforceable by law. Hence, the Parliament can provide for the imposition of appropriate penalty or punishment for failure to fulfil any of them.

H.R. Gokhale, the then Law Minister, gave the following reason for incorporating the fundamental duties in the Constitution after twenty-six years of its inauguration: 'In post-independent India, particularly on the eve of emergency in June 1975, a section of the people showed no anxiety to fulfil their fundamental obligations of respecting the established legal order ..... the provisions of chapter on fundamental duties would have a sobering effect on these restless spirits who have had a host of anti-national subversive and unconstitutional agitations in the past'.

Indira Gandhi, the then Prime Minister, justified the inclusion of fundamental duties in the Constitution and argued that their inclusion would help to strengthen democracy. She said, 'the moral value of fundamental duties would be not to smoother rights but to establish a democratic balance by making the people conscious of their duties equally as they are conscious of their rights'.

The Opposition in the Parliament strongly opposed the inclusion of fundamental duties in the Constitution by the Congress government. However, the new Janata Government headed by Morarji Desai in the post-emergency period did not annul the Fundamental Duties. Notably, the new government sought to undo many changes introduced in the Constitution by the 42nd Amendment Act (1976) through the 43rd Amendment Act (1977) and the 44th Amendment Act (1978). This shows that there was an eventual consensus on the necessity and desirability of including the Fundamental Duties in the Constitution. This is more clear with the addition of one more Fundamental Duty in 2002 by the 86th Amendment Act.

VERMA COMMITTEE OBSERVATIONS

The Verma Committee on Fundamental Duties of the Citizens (1999) identified the existence of legal provisions for the implementation of some of the Fundamental Duties. They are mentioned below:

1. The Prevention of Insults to National Honour Act (1971) prevents disrespect to the Constitution of India, the National Flag and the National Anthem.
2. The various criminal laws in force provide for punishments for encouraging enmity between different sections of people on grounds of language, race, place of birth, religion and so on.
3. The Protection of Civil Rights Act[6] (1955) provides for punishments for offences related to caste and religion.
4. The Indian Penal Code (IPC) declares the imputations and assertions prejudicial to national integration as punishable offences.
5. The Unlawful Activities (Prevention) Act of 1967 provides for the declaration of a communal organisation as an unlawful association.
6. The Representation of People Act (1951) provides for the disqualification of members of the Parliament or a state legislature for indulging in corrupt practice, that is, soliciting votes on the ground of religion or promoting enmity between different sections of people on grounds of caste, race, language, religion and so on.
7. The Wildlife (Protection) Act of 1972 prohibits trade in rare and endangered species.
8. The Forest (Conservation) Act of 1980 checks indiscriminate deforestation and diversion of forest land for non-forest purposes.

[6]This Act was known as the Untouchability (Offences) Act till 1976.

CHAPTER 11 Amendment of the Constitution

Like any other written Constitution, the Constitution of India also provides for its amendment in order to adjust itself to the changing conditions and needs. However, the procedure laid down for its amendment is neither as easy as in Britain nor as difficult as in USA. In other words, the Indian Constitution is neither flexible nor rigid but a synthesis of both.

Article 368 in Part XX of the Constitution deals with the powers of Parliament to amend the Constitution and its procedure. It states that the Parliament may, in exercise of its constituent power, amend by way of addition, variation or repeal any provision of the Constitution in accordance with the procedure laid down for the purpose. However, the Parliament cannot amend those provisions which form the 'basic structure' of the Constitution. This was ruled by the Supreme Court in the *Kesavananda Bharati* case[1] (1973).

PROCEDURE FOR AMENDMENT

The procedure for the amendment of the Constitution as laid down in Article 368 is as follows:

1. An amendment of the Constitution can be initiated only by the introduction of a bill for the purpose in either House of Parliament and not in the state legislatures.
2. The bill can be introduced either by a minister or by a private member and does not require prior permission of the president.
3. The bill must be passed in each House by a special majority, that is, a majority of the total membership of the House and a majority of two-thirds of the members of the House present and voting.
4. Each House must pass the bill separately. In case of a disagreement between the two Houses, there is no provision for holding a joint sitting of the two Houses for the purpose of deliberation and passage of the bill.
5. If the bill seeks to amend the federal provisions of the Constitution, it must also be ratified by the legislatures of half of the states by a simple majority, that is, a majority of the members of the House present and voting.
6. After duly passed by both the Houses of Parliament and ratified by the state legislatures, where necessary, the bill is presented to the president for assent.
7. The president must give his/her assent to the bill. He/she can neither withhold his/her assent to the bill nor return the bill for reconsideration of the Parliament. The 24th Constitutional Amendment Act of 1971 made it obligatory for the President to give his/her assent to a constitutional Amendment Bill.
8. After the president's assent, the bill becomes an Act (i.e., a constitutional amendment act) and the Constitution stands amended in accordance with the terms of the Act.

[1] *Kesavananda Bharati* vs. *State of Kerala* (1973).

TYPES OF AMENDMENTS

Article 368 provides for two types of amendments, that is, by a special majority of Parliament and also through the ratification of half of the states by a simple majority. But, some other articles provide for the amendment of certain provisions of the Constitution by a simple majority of Parliament, that is, a majority of the members of each House present and voting (similar to the ordinary legislative process). Notably, these amendments are not deemed to be amendments of the Constitution for the purposes of Article 368.

Therefore, the Constitution can be amended in three ways:

(a) Amendment by simple majority of the Parliament,
(b) Amendment by special majority of the Parliament, and
(c) Amendment by special majority of the Parliament and the ratification of half of the state legislatures.

By Simple Majority of Parliament

A number of provisions in the Constitution can be amended by a simple majority of the two Houses of Parliament outside the scope of Article 368. These provisions include:

1. Admission or establishment of new states.
2. Formation of new states and alteration of areas, boundaries or names of existing states.
3. Abolition or creation of legislative councils in states.
4. Second Schedule—emoluments, allowances, privileges and so on of the president, the governors, the Speakers, judges, etc.
5. Quorum in Parliament.
6. Salaries and allowances of the members of Parliament.
7. Rules of procedure in Parliament.
8. Privileges of the Parliament, its members and its committees.
9. Use of English language in Parliament.
10. Number of puisne judges in the Supreme Court.
11. Conferment of more jurisdiction on the Supreme Court.
12. Use of official language.
13. Citizenship—acquisition and termination.
14. Elections to Parliament and state legislatures.
15. Delimitation of constituencies.
16. Union territories.
17. Fifth Schedule—administration of scheduled areas and scheduled tribes.
18. Sixth Schedule—administration of tribal areas.

By Special Majority of Parliament

The majority of the provisions in the Constitution need to be amended by a special majority of the Parliament, that is, a majority of the total membership of each House and a majority of two-thirds of the members of each House present and voting. The expression 'total membership' means the total number of members comprising the House irrespective of fact whether there are vacancies or absentees.

'Strictly speaking, the special majority is required only for voting at the third reading stage of the bill but by way of abundant caution the requirement for special majority has been provided for in the rules of the Houses in respect of all the effective stages of the bill'[2].

The provisions which can be amended by this way includes: (i) Fundamental Rights; (ii) Directive Principles of State Policy; and (iii) All other provisions which are not covered by the first and third categories.

By Special Majority of Parliament and Consent of States

Those provisions of the Constitution which are related to the federal structure of the polity can be amended by a special majority of the Parliament and also with the consent of half of the state legislatures by a simple majority. If one or some or all the remaining states take no action on the bill, it does not

[2]Subhas C. Kashyap, *Our Parliament*, National Book Trust, 1999, p. 168.

matter; the moment half of the states give their consent, the formality is completed. There is no time limit within which the states should give their consent to the bill.

The following provisions can be amended in this way:

1. Election of the President and its manner.
2. Extent of the executive power of the Union and the states.
3. Supreme Court and high courts.
4. Distribution of legislative powers between the Union and the states.
5. Goods and Services Tax Council[3].
6. Any of the lists in the Seventh Schedule.
7. Representation of states in Parliament.
8. Power of Parliament to amend the Constitution and its procedure (Article 368 itself).

CRITICISM OF THE AMENDMENT PROCEDURE

Critics have criticised the amendment procedure of the Constitution on the following grounds:

1. There is no provision for a special body like Constitutional Convention (as in USA) or Constitutional Assembly for amending the Constitution. The constituent power is vested in the Parliament and only in few cases, in the state legislatures.
2. The power to initiate an amendment to the Constitution lies with the Parliament. Hence, unlike in USA[4], the state legislatures cannot initiate any bill or proposal for amending the Constitution except in one case, that is, passing a resolution requesting the Parliament for the creation or abolition of legislative councils in the states. Here also, the Parliament can either approve or disapprove such a resolution or may not take any action on it.
3. Major part of the Constitution can be amended by the Parliament alone either by a special majority or by a simple majority. Only in few cases, the consent of the state legislatures is required and that too, only half of them, while in USA, it is three-fourths of the states.
4. The Constitution does not prescribe the time frame within which the state legislatures should ratify or reject an amendment submitted to them. Also, it is silent on the issue whether the states can withdraw their approval after according the same.
5. There is no provision for holding a joint sitting of both the Houses of Parliament if there is a deadlock over the passage of a constitutional amendment bill. On the other hand, a provision for a joint sitting is made in the case of an ordinary bill.
6. The process of amendment is similar to that of a legislative process. Except for the special majority, the constitutional amendment bills are to be passed by the Parliament in the same way as ordinary bills.
7. The provisions relating to the amendment procedure are too sketchy. Hence, they leave a wide scope for taking the matters to the judiciary.

Despite these defects, it cannot be denied that the process has proved to be simple and easy and has succeeded in meeting the changed needs and conditions. The procedure is not so flexible as to allow the ruling parties to change it according to their whims. Nor is it so rigid as to be incapable of adopting itself to the changing needs. It, as rightly said by K.C. Wheare, 'strikes a good balance between flexibility and rigidity'[5]. In this context, Pandit Jawaharlal Nehru said in the Constituent Assembly, 'While we want this Constitution to be as solid and permanent as we can make it, there is no permanence in a Constitution. There should be a certain

[3]This provision was added by the 101st Amendment Act of 2016. This is related to Article 279-A.

[4]In USA, an amendment can also be proposed by a constitutional convention called by the Congress (American Legislature) on the petition of two-thirds of the state legislatures.

[5]K.C. Wheare, *Modern Constitutions*, 1966, p. 43.

flexibility. If you make any Constitution rigid and permanent, you stop the nation's growth, the growth of a living, vital, organic people'[6].

Similarly, Dr. B.R. Ambedkar observed in the Constituent Assembly that, 'The Assembly has not only refrained from putting a seal of finality and infallibility upon this Constitution by denying the people the right to amend the Constitution as in Canada or by making the amendment of the Constitution subject to the fulfilment of extraordinary terms and conditions as in America or Australia, but has provided for a facile procedure for amending the Constitution'[7].

K.C. Wheare has admired the variety of amendment procedures contained in the Constitution of India. He said, 'this variety in the amending process is wise but rarely found'. According to Granville Austin, 'the amending process has proved itself one of the most ably conceived aspects of the Constitution. Although it appears complicated, it is merely diverse'.[8]

[6]*Constituent Assembly Debates*, Vol. VII, pp. 322–23.

[7]*Constituent Assembly Debates*, Vol. IX, p. 976.

[8]Granville Austin, *The Indian Constitution: Cornerstone of a Nation,* Oxford, 1966, p. 25.

CHAPTER 12 Basic Structure of the Constitution

EMERGENCE OF THE BASIC STRUCTURE

The question whether Fundamental Rights can be amended by the Parliament under Article 368 came for consideration of the Supreme Court within a year of the Constitution coming into force. In the *Shankari Prasad* case[1] (1951), the constitutional validity of the First Amendment Act (1951), which curtailed the right to property, was challenged. The Supreme Court ruled that the power of the Parliament to amend the Constitution under Article 368 also includes the power to amend Fundamental Rights. The word 'law' in Article 13 includes only ordinary laws and not the constitutional amendment acts (constituent laws). Therefore, the Parliament can abridge or take away any of the Fundamental Rights by enacting a constitutional amendment act and such a law will not be void under Article 13.

Again, in the *Sajjan Singh* case[1a] (1964), the Supreme Court re-affirmed the above stand. In other words, the court held that a constitutional amendment act made under Article 368 is not a law within the meaning of Article 13.

But in the *Golak Nath* case[2] (1967), the Supreme Court reversed its earlier stand. In this case, the constitutional validity of the Seventeenth Amendment Act (1964), which inserted certain state acts in the Ninth Schedule, was challenged. The Supreme Court ruled that the Fundamental Rights are given a 'transcendental and immutable' position and hence, the Parliament cannot abridge or take away any of these rights. A constitutional amendment act is also a law within the meaning of Article 13 and hence, would be void for violating any of the Fundamental Rights.

The Parliament reacted to the Supreme Court's judgement in the *Golak Nath* case (1967) by enacting the 24th Amendment Act (1971). This Act amended Articles 13 and 368. It declared that the Parliament has the power to abridge or take away any of the Fundamental Rights under Article 368 and such an act will not be a law under the meaning of Article 13.

However, in the *Kesavananda Bharati* case[3] (1973), the Supreme Court overruled its judgement in the *Golak Nath* case (1967). It upheld the validity of the 24th Amendment Act (1971) and stated that Parliament is empowered to abridge or take away any of the Fundamental Rights. At the same time, it laid down a new doctrine of the 'basic structure' (or 'basic features') of the Constitution. It ruled that the constituent power of Parliament under Article 368 does not enable it to alter the 'basic structure' of the Constitution. This means that the Parliament cannot abridge or take away a Fundamental Right that forms a part of the 'basic structure' of the Constitution.

The doctrine of basic structure of the constitution was reaffirmed and applied by the Supreme Court in the *Indira Nehru Gandhi* case[3a] (1975). In this case, the Supreme Court invalidated a provision of the 39th Amendment

[1] *Shankari Prasad* vs. *Union of India* (1951)
[1a] *Sajjan Singh* vs. *State of Rajasthan* (1964)
[2] *Golak Nath* vs. *State of Punjab* (1967)
[3] *Kesavananda Bharati* vs. *State of Kerala* (1973)
[3a] *Indira Nehru Gandhi* vs. *Raj Narain* (1975)

Act (1975) which kept the election disputes involving the Prime Minister and the Speaker of Lok Sabha outside the jurisdiction of all courts. The court said that this provision was beyond the amending power of Parliament as it affected the basic structure of the constitution.

Again, the Parliament reacted to this judicially innovated doctrine of 'basic structure' by enacting the 42nd Amendment Act (1976). This Act amended Article 368 and declared that there is no limitation on the constituent power of Parliament and no amendment can be questioned in any court on any ground including that of the contravention of any of the Fundamental Rights.

However, the Supreme Court in the *Minerva Mills* case[4] (1980) invalidated this provision as it excluded judicial review which is a 'basic feature' of the Constitution. Applying the doctrine of 'basic structure' with respect to Article 368, the court held that:

> "Since the Constitution had conferred a limited amending power on the Parliament, the Parliament cannot under the exercise of that limited power enlarge that very power into an absolute power. Indeed, a limited amending power is one of the basic features of the Constitution and, therefore, the limitations on that power cannot be destroyed. In other words, Parliament cannot, under article 368, expand its amending power so as to acquire for itself the right to repeal or abrogate the Constitution or to destroy its basic features. The donee of a limited power cannot by the exercise of that power convert the limited power into an unlimited one".

Again, in the *Waman Rao* case[5] (1980), the Supreme Court adhered to the doctrine of the 'basic structure' and further clarified that it would apply to constitutional amendments enacted after April 24, 1973 (i.e., the date of the judgement in the *Kesavananda Bharati* case).

[4] *Minerva Mills* vs. *Union of India* (1980)
[5] *Waman Rao* vs. *Union of India* (1980)

ELEMENTS OF THE BASIC STRUCTURE

The present position is that the Parliament under Article 368 can amend any part of the Constitution including the Fundamental Rights but without affecting the 'basic structure' of the Constitution. However, the Supreme Court is yet to define or clarify as to what constitutes the 'basic structure' of the Constitution. From the various judgements, the following have emerged as 'basic features' of the Constitution or elements of the 'basic structure' of the constitution:

1. Supremacy of the Constitution
2. Sovereign, democratic and republican nature of the Indian polity
3. Secular character of the Constitution
4. Separation of powers between the legislature, the executive and the judiciary
5. Federal character of the Constitution
6. Unity and integrity of the nation
7. Welfare state (socio-economic justice)
8. Judicial review
9. Freedom and dignity of the individual
10. Parliamentary system
11. Rule of law
12. Harmony and balance between Fundamental Rights and Directive Principles
13. Principle of equality
14. Free and fair elections
15. Independence of Judiciary
16. Limited power of Parliament to amend the Constitution
17. Effective access to justice
18. Principles (or essence) underlying fundamental rights
19. Powers of the Supreme Court under Articles 32, 136, 141 and 142[6]
20. Powers of the High Courts under Articles 226 and 227[7]

[6] Article 32 (Remedies for enforcement of fundamental rights including writs), Article 136 (Special leave to appeal by the Supreme Court), Article 141 (Law declared by Supreme Court to be binding on all courts) and Article 142 (Enforcement of decrees and orders of Supreme Court and orders as to discovery, etc.).
[7] Article 226 (Power of High Courts to issue certain writs) and Article 227 (Power of Superintendence over all courts by the High Court).

Table 12.1 Evolution of the Basic Structure of the Constitution

Sl. No.	Name of the Case (Year)	Elements of the Basic Structure (As Declared by the Supreme Court)
1.	*Kesavananda Bharati* Case[3] (1973) (popularly known as the Fundamental Rights Case)	1. Supremacy of the Constitution 2. Separation of powers between the legislature, the executive and the judiciary 3. Republic and democratic form of government 4. Secular character of the constitution 5. Federal character of the constitution 6. Sovereignty and unity of India 7. Freedom and dignity of the individual 8. Mandate to build a welfare state 9. Parliamentary System
2.	*Indira Nehru Gandhi* Case[3a] (1975) (popularly known as the Election Case)	1. India as a sovereign democratic republic 2. Equality of status and opportunity of an individual 3. Secularism and freedom of conscience and religion 4. Government of laws and not of men (i.e., Rule of Law) 5. Judicial review 6. Free and fair elections which is implied in democracy
3.	*Minerva Mills* Case[4] (1980)	1. Limited power of Parliament to amend the constitution 2. Judicial review 3. Harmony and balance between fundamental rights and directive principles
4.	*Central Coal Fields Ltd.* Case[8] (1980)	Effective access to justice
5.	*Bhim Singhji* Case[9] (1980)	Welfare State (Socio-economic justice)
6.	*S.P. Sampath Kumar* Case[10] (1986)	1. Rule of law 2. Judicial review
7.	*P. Sambamurthy* Case[11] (1986)	1. Rule of law 2. Judicial review
8.	*Delhi Judicial Service Association* Case[12] (1991)	Powers of the Supreme Court under Articles 32, 136, 141 and 142
9.	*Indra Sawhney* Case[13] (1992) (popularly known as the Mandal Case)	Rule of law
10.	*Kumar Padma Prasad* Case[14] (1992)	Independence of judiciary
11.	*Kihoto Hollohan* Case[15] (1992) (popularly known as Defection Case)	1. Free and fair elections 2. Sovereign, democratic, republican structure
12.	*Raghunath Rao* Case[16] (1993)	1. Principle of equality 2. Unity and integrity of India

(Contd.)

[8] *Central Coal Fields Ltd.*, vs. *Jaiswal Coal Co.* (1980)
[9] *Bhim Singhji* vs. *Union of India* (1980)
[10] *S.P. Sampath Kumar* vs. *Union of India* (1986)
[11] *P. Sambamurthy* vs. *State of A.P.* (1986)
[12] *Delhi Judicial Service Association* vs. *State of Gujarat* (1991)
[13] *Indra Sawhney* vs. *Union of India* (1992)
[14] *Kumar Padma Prasad* vs. *Union of India* (1992)
[15] *Kihoto Hollohan* vs. *Zachillhu* (1992)
[16] *Raghunath Rao* vs. *Union of India* (1993)

Sl. No.	Name of the Case (Year)	Elements of the Basic Structure (As Declared by the Supreme Court)
13.	*S.R. Bommai* Case[17] (1994)	1. Federalism 2. Secularism 3. Democracy 4. Unity and integrity of the nation 5. Social justice 6. Judicial review
14.	*L. Chandra Kumar* Case[18] (1997)	Powers of the High Courts under Articles 226 and 227
15.	*Indra Sawhney* II Case[19] (1999)	Principle of equality
16.	*All India Judge's Association* Case[20] (2001)	Independent judicial system
17.	*Kuldip Nayar* Case[21] (2006)	1. Democracy 2. Free and fair elections
18.	*M. Nagaraj* Case[22] (2006)	Principle of equality
19.	*I.R. Coelho* Case[23] (2007) (popularly known as IX Schedule Case)	1. Rule of law 2. Separation of powers 3. Principles (or essence) underlying fundamental rights 4. Judicial review 5. Principle of equality
20.	*Ram Jethmalani* Case[24] (2011)	Powers of the Supreme Court under Article 32
21.	*Namit Sharma* Case[25] (2012)	Freedom and dignity of the individual
22.	*Madras Bar Association* Case[26] (2014)	1. Judicial review 2. Powers of the High Courts under Articles 226 and 227

[17] *S.R. Bommai* vs. *Union of India* (1994)
[18] *L. Chandra Kumar* vs. *Union of India* (1997)
[19] *Indra Sawhney* II vs. *Union of India* (1999)
[20] *All India Judge's Association* vs. *Union of India* (2001)
[21] *Kuldip Nayar* vs. *Union of India* (2006)
[22] *M. Nagaraj* vs. *Union of India* (2006)
[23] *I.R. Coelho* vs. *State of Tamil Nadu* (2007)
[24] *Ram Jethmalani* vs. *Union of India* (2011)
[25] *Namit Sharma* vs. *Union of India* (2012)
[26] *Madras Bar Association* vs. *Union of India* (2014)

PART II System of Government

In this Part...

CHAPTER 13 Parliamentary System

The Constitution of India provides for a parliamentary form of government, both at the Centre and in the states. Articles 74 and 75 deal with the parliamentary system at the Centre and Articles 163 and 164 in the states.

Modern democratic governments are classified into parliamentary and presidential on the basis of the nature of relations between the executive and the legislative organs of the government. The parliamentary system of government is the one in which the executive is responsible to the legislature for its policies and acts. The presidential system of government, on the other hand, is one in which the executive is not responsible to the legislature for its policies and acts, and is constitutionally independent of the legislature with respect of its term of office.

The parliamentary government is also known as cabinet government or responsible government or Westminster model of government and is prevalent in Britain, Japan, Canada and India among others. The presidential government, on the other hand, is also known as non-responsible or non-parliamentary or fixed executive system of government and is prevalent in USA, Brazil, Russia and Sri Lanka among others.

Ivor Jennings called the parliamentary system as 'cabinet system' because the cabinet is the nucleus of power in a parliamentary system. The parliamentary government is also known as 'responsible government' as the cabinet (the real executive) is accountable to the Parliament and stays in office so long as it enjoys the latter's confidence. It is described as 'Westminster model of government' after the location of the British Parliament, where the parliamentary system originated.

In the past, the British constitutional and political experts described the Prime Minister as '*primus inter pares*' (first among equals) in relation to the cabinet. In the recent period, the Prime Minister's power, influence and position have increased significantly vis-a-vis the cabinet. He/she has come to play a 'dominant' role in the British politico-administrative system. Hence, the later political analysts, like Cross-man, Mackintosh and others have described the British system of government as 'prime ministerial government'. The same description holds good in the Indian context too.

FEATURES OF PARLIAMENTARY GOVERNMENT

The features or principles of parliamentary government in India are as follows:

1. Nominal and Real Executives The President is the nominal executive (*de jure* executive or titular executive) while the

'Kitchen Cabinet'. It is only an advisory body and consists of non-elected departmental secretaries. They are selected and appointed by him/her, are responsible only to him/her, and can be removed by him/her any time.

(d) The President and his/her secretaries are not responsible to the Congress for their acts. They neither possess membership in the Congress nor attend its sessions.

(e) The President cannot dissolve the House of Representatives—the lower house of the Congress.

(f) The doctrine of separation of powers is the basis of the American presidential system. The legislative, executive and judicial powers of the government are separated and vested in the three independent organs of the government.

MERITS OF THE PARLIAMENTARY SYSTEM

The parliamentary system of government has the following merits:

1. Harmony Between Legislature and Executive The greatest advantage of the parliamentary system is that it ensures harmonious relationship and cooperation between the legislative and executive organs of the government. The executive is a part of the legislature and both are interdependent at work. As a result, there is less scope for disputes and conflicts between the two organs.

2. Responsible Government By its very nature, the parliamentary system establishes a responsible government. The ministers are responsible to the Parliament for all their acts of omission and commission. The Parliament exercises control over the ministers through various devices like question hour, discussions, adjournment motion, no confidence motion, etc.

3. Prevents Despotism Under this system, the executive authority is vested in a group of individuals (council of ministers) and not in a single person. This dispersal of authority checks the dictatorial tendencies of the executive. Moreover, the executive is responsible to the Parliament and can be removed by a no-confidence motion.

4. Ready Alternative Government In case the ruling party loses its majority, the Head of the State can invite the opposition party to form the government. This means an alternative government can be formed without fresh elections. Hence, Dr. Jennings says, 'the leader of the opposition is the alternative prime minister'.

5. Wide Representation In a parliamentary system, the executive consists of a group of individuals (i.e., ministers who are representatives of the people). Hence, it is possible to provide representation to all sections and regions in the government. The Prime Minister while selecting his/her ministers can take this factor into consideration.

DEMERITS OF THE PARLIAMENTARY SYSTEM

In spite of the above merits, the parliamentary system suffers from the following demerits:

1. Unstable Government The parliamentary system does not provide a stable government. There is no guarantee that a government can survive its tenure. The ministers depend on the mercy of the majority legislators for their continuity and survival in office. A no-confidence motion or political defection or evils of multiparty coalition can make the government unstable. The Government headed by Morarji Desai, Charan Singh, V.P. Singh, Chandra Sekhar, Deva Gowda and I.K. Gujral are some such examples.

2. No Continuity of Policies The parliamentary system is not conductive for the formulation and implementation of long-term policies. This is due to the uncertainty of the tenure of the government. A change in the ruling party is usually followed by changes in the

Prime Minister is the real executive (*de facto* executive). Thus, the President is head of the State, while the Prime Minister is head of the government. Article 74 provides for a council of ministers headed by the Prime Minister to aid and advise the President in the exercise of his/her functions. The advice so tendered is binding on the President[1].

2. Majority Party Rule The political party which secures majority seats in the Lok Sabha forms the government. The leader of that party is appointed as the Prime Minister by the President; other ministers are appointed by the President on the advice of the prime minister. However, when no single party gets the majority, a coalition of parties may be invited by the President to form the government.

3. Collective Responsibility This is the bedrock principle of parliamentary government. The ministers are collectively responsible to the Parliament in general and to the Lok Sabha in particular (Article 75). They act as a team, and swim and sink together. The principle of collective responsibility implies that the Lok Sabha can remove the ministry (i.e., council of ministers headed by the Prime Minister) from office by passing a vote of no confidence.

4. Political Homogeneity Usually members of the council of ministers belong to the same political party, and hence they share the same political ideology. In case of coalition government, the ministers are bound by consensus.

5. Double Membership The ministers are members of both the legislature and the executive. This means that a person cannot be a minister without being a member of the Parliament. The Constitution stipulates that a minister who is not a member of the Parliament for a period of six consecutive months ceases to be a minister.

[1]The 42nd and 44th Amendment Acts of 1976 and 1978 respectively have made the ministerial advice binding on the president.

6. Leadership of the Prime Minister The Prime Minister plays the leadership role in this system of government. He/she is the leader of council of ministers, leader of the Parliament and leader of the party in power. In these capacities, he/she plays a significant and highly crucial role in the functioning of the government.

7. Dissolution of the Lower House The lower house of the Parliament (Lok Sabha) can be dissolved by the President on recommendation of the Prime Minister. In other words, the Prime Minister can advise the President to dissolve the Lok Sabha before the expiry of its term and hold fresh elections. This means that the executive enjoys the right to get the legislature dissolved in a parliamentary system.

8. Secrecy The ministers operate on the principle of secrecy of procedure and cannot divulge information about their proceedings, policies and decisions. They take the oath of secrecy before entering their office. The oath of secrecy to the ministers is administered by the President.

FEATURES OF PRESIDENTIAL GOVERNMENT

Unlike the Indian Constitution, the American Constitution provides for the presidential form of government. The features of the American presidential system of government are as follows:

(a) The American President is both the head of the State and the head of government. As the head of State, he/she occupies a ceremonial position. As the head of government, he/she leads the executive organ of government.

(b) The President is elected by an electoral college for a fixed tenure of four years. He/she cannot be removed by the Congress except by impeachment for a grave unconstitutional act.

(c) The President governs with the help of a cabinet or a smaller body called

policies of the government. For example, the Janata Government headed by Morarji Desai in 1977 reversed a large number of policies of the previous Congress Government. The same was repeated by the Congress government after it came back to power in 1980.

3. Dictatorship of the Cabinet When the ruling party enjoys absolute majority in the Parliament, the cabinet becomes autocratic and exercises nearly unlimited powers. H.J. Laski says that the parliamentary system gives the executive an opportunity for tyranny. Ramsay Muir, the former British Prime Minister, also complained of the 'dictatorship of the cabinet'[2]. This phenomenon was witnessed during the era of Indira Gandhi and Rajiv Gandhi.

4. Against Separation of Powers In the parliamentary system, the legislature and the executive are together and inseparable. The cabinet acts as the leader of legislature as well as the executive. As Bagehot points out, 'the cabinet is a hyphen that joins the buckle that binds the executive and legislative departments together.' Hence, the whole system of government goes against the letter and spirit of the theory of separation of powers[3]. In fact, there is a fusion of powers.

5. Government by Amateurs The parliamentary system is not conducive to administrative efficiency as the ministers are not experts in their fields. The Prime Minister has a limited choice in the selection of ministers; his/her choice is restricted to the members of Parliament alone and does not extend to external talent. Moreover, the ministers devote most of their time to parliamentary work, cabinet meetings and party activities.

[2]*How Britain is Governed* is a popular book written by him.

[3]This theory was propounded by Montesquieu, a French political thinker, in his book *The Spirit of Laws* (1748) to promote individual liberty. He stated that concentration of powers in one person or a body of persons would result in despotism and negate individual liberty.

The comparison of the parliamentary and presidential systems in terms of their features, merits and demerits is given in Table 13.1.

REASONS FOR ADOPTING PARLIAMENTARY SYSTEM

A plea was made in favour of the US presidential system of government in the Constituent Assembly[4]. But, the founding fathers preferred the British parliamentary system due to the following reasons:

1. Familiarity with the System The Constitution-makers were somewhat familiar with the parliamentary system as it had been in operation in India during the British rule. K.M. Munshi argued that, 'For the last thirty or forty years, some kind of responsibility has been introduced in the governance of this country. Our constitutional traditions have become Parliamentary. After this experience, why should we go back and buy a novel experience.'[5]

2. Preference to More Responsibility Dr. B.R. Ambedkar pointed out in the Constituent Assembly that 'a democratic executive must satisfy two conditions: stability and responsibility. Unfortunately, it has not been possible so far to devise a system which can ensure both in equal degree. The American system gives more stability but less responsibility. The British system, on the other hand, gives more responsibility but less stability. The Draft Constitution in recommending the parliamentary system of Executive has preferred more responsibility to more stability.'[6]

3. Need to Avoid Legislative—Executive Conflicts The framers of the Constitution wanted to avoid the conflicts between the legislature and the executive which are bound to occur in the presidential system prevalent in USA. They thought that an infant democracy

[4]K.T. Shah favoured the adoption of the presidential system.

[5]*Constituent Assembly Debates,* Volume VII, pp. 284-5.

[6]*Constituent Assembly Debates,* Volume VII, p. 32.

Table 13.1 Comparing Parliamentary and Presidential Systems

Parliamentary System	Presidential System
Features: 1. Dual executive. 2. Majority party rule 3. Collective responsibility. 4. Political homogeneity 5. Double membership. 6. Leadership of prime minister. 7. Dissolution of Lower House. 8. Fusion of powers.	*Features:* 1. Single executive. 2. President and legislators elected separately for a fixed term. 3. Non-responsibility 4. Political homogeneity may not exist. 5. Single membership 6. Domination of president. 7. No dissolution of Lower House. 8. Separation of powers.
Merits: 1. Harmony between legislature and executive. 2. Responsible government. 3. Prevents despotism. 4. Wide representation.	*Demerits:* 1. Conflict between legislature and executive. 2. Non-responsible government. 3. May lead to autocracy. 4. Narrow representation.
Demerits: 1. Unstable government. 2. No continuity of policies. 3. Against separation of powers 4. Government by amateurs.	*Merits:* 1. Stable government. 2. Definiteness in policies. 3. Based on separation of powers. 4. Government by experts

could not afford to take the risk of a perpetual cleavage, feud or conflict or threatened conflict between these two organs of the government. They wanted a form of government that would be conductive to the manifold development of the country.

4. Nature of Indian Society India is one of the most heterogeneous States and most complex plural societies in the world. Hence, the Constitution-makers adopted the parliamentary system as it offers greater scope for giving representation to various section, interests and regions in the government. This promotes a national spirit among the people and builds a united India.

Whether the parliamentary system should be continued or should be replaced by the presidential system has been a point of discussion and debate in our country since the 1970s. This matter was considered in detail by the Swaran Singh Committee appointed by the Congress government in 1975. The committee opined that the parliamentary system has been doing well and hence, there is no need to replace it by the presidential system.

DISTINCTION BETWEEN INDIAN AND BRITISH MODELS

The parliamentary system of government in India is largely based on the British parliamentary system. However, it never became a replica of the British system and differs in the following respects:

1. India has a republican system in place of the British monarchical system. In other words, the Head of the State in India (that is, President) is elected, while the Head of the State in Britain (that is, King or Queen) enjoys a hereditary position.
2. The British system is based on the doctrine of the sovereignty of Parliament, while the Parliament is not supreme in India and enjoys limited and restricted powers due to a written Constitution, federal system, judicial review and fundamental rights.
3. In Britain, the Prime Minister should be a member of the Lower House (House of Commons) of the Parliament. In India, the Prime Minister may be a

member of any of the two Houses of Parliament.[7]

4. Usually, the members of Parliament alone are appointed as ministers in Britain. In India, a person who is not a member of Parliament can also be appointed as minister, but for a maximum period of six months.

5. Britain has a system of legal responsibility of the minister while India has no such system. Unlike in Britain, the ministers in India are not required to countersign the official acts of the Head of the State.

6. 'Shadow cabinet' is a unique institution of the British cabinet system. It is formed by the opposition party to balance the ruling cabinet and to prepare its members for future ministerial office. There is no such institution in India.

[7]For example, three Prime Ministers, Indira Gandhi (1966), Deve Gowda (1996), and Manmohan Singh (2004), were members of the Rajya Sabha.